

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WAYNE ENNIS,

Defendant and Appellant.

E053964

(Super.Ct.No. FVA800897)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On May 15, 2008, a felony complaint charged defendant and appellant Robert Wayne Ennis (defendant) with assault with a firearm under Penal Code¹ section 245,

¹ All statutory references are to the Penal Code unless otherwise specified.

subdivision (a)(2). The complaint also alleged that defendant used a firearm within the meaning of section 12022.5, subdivisions (a) and (d), in the commission of count 1. Defendant pled not guilty. On June 5, 2008, an information charged defendant with the same crime and allegation. On October 16, 2008, a jury found defendant guilty of felony assault with a firearm under section 245, subdivision (a)(2), and found true the special allegation.²

On November 25, 2008, defendant received a suspended sentence to state prison for seven years, as follows: the midterm of three years as to count 1, and the midterm of four years as to the allegation under section 12022.5, subdivision (a), to run consecutive to count 1, for a total term of seven years. Thereafter, the trial court sentenced defendant to formal probation for three years, which was to terminate on November 25, 2011. Probation conditions, among other standard terms, included reporting to his probation officer, no use or possession of any controlled substance outside of prescriptive use, and no possession of any drug paraphernalia.

On May 18, 2011, the probation department filed a petition for revocation of probation and remand, and for an order for the arrest and apprehension of defendant for hearing on said probation revocation. The petition alleged that defendant failed to report to probation, he admitted to use of methamphetamine, and he informed probation officers where to find drug paraphernalia. Defendant denied the allegations.

² Defendant appealed the judgment. On February 19, 2010, in case No. E047196, we affirmed the judgment.

On July 1, 2011, a hearing under *People v. Vickers* (1972) 8 Cal.3d 451 was held. The trial court found defendant to be in violation of probation, and probation was revoked and ordered terminated. Thereafter, the trial court imposed the previously-suspended sentence of seven years, with 440 days' credit for time served. Moreover, a previously-stayed probation revocation restitution fine of \$200 was imposed under section 1202.44. Furthermore, the trial court imposed an additional restitution fine of \$200 under section 1202.4, and a final restitution fine of \$200 under section 1202.45, stayed pending successful completion of parole.

I

STATEMENT OF FACTS

On May 13, 2011, Tiffani Lawyer, a San Bernardino County probation officer, was assigned to check on defendant. Lawyer was not defendant's regularly-assigned probation officer.

A. Defendant's Failure to Report

Prior to Officer Lawyer conducting a search of defendant's home, she checked the probation department's data base for information on defendant's reporting record. She testified that she was able to determine that defendant had failed to report to probation since about November of 2010, and prior to that, defendant's reporting had been intermittent.

Defendant reported to probation as directed "for a while." He had been told to report via "kiosking," but when the kiosk was not registering, he submitted mail reports.

Officer Lawyer was not aware of any records indicating that defendant had attempted to report to probation for the last six-month period. Lawyer spoke with defendant about his apparent failure to report. Defendant stated that he stopped reporting because he feared possible arrest as he was not current with the payment of fines and fees.

B. Search of Defendant's Home

On May 13, 2011, Probation Officer Lawyer went to defendant's home with a team of officers as part of a multi-level law enforcement operation, and conducted a search of his residence. Defendant had several structures on his property; only the structure defendant indicated as his home was searched.

During the search, Officer Lawyer found two glass methamphetamine pipes wrapped in cloth on a shelf after defendant told her where she could find them. She asked defendant if he was using the glass pipe, he responded, "Yes." She then asked, "Where's your drugs or your paraphernalia?" Defendant told her where they were. She, therefore, understood that it was implied that the pipes were his as she asked about "your pipes" and "your paraphernalia," and he admitted that he was using methamphetamine. Probation Officer Lawyer could not remember whether defendant used the words, "Those are my pipes."

Defendant informed Lawyer that he was using methamphetamine irregularly. He told her that he "used when he had money or he had something that he needed to take care of." Probation Officer Lawyer never found methamphetamine on defendant's

person and she further testified that she is not aware of defendant ever testing positive for methamphetamine.

C. Imposition of Prior-Suspended Sentence

The court took judicial notice of the terms and conditions of probation that were imposed when defendant was sentenced on November 25, 2008. Some of the terms included no use or possession of any controlled substance without a prescription, and no possession of any type of drug paraphernalia.

After hearing the evidence and argument from counsel, the trial court stated, “it comes to the point where I have to do what I have to do. I have stuck my neck out for [defendant] on so many occasions.” After a thorough discussion, the trial court concluded that defendant continued to use methamphetamine and the pipes located during the search belonged to defendant. The court, therefore, found that there was a preponderance of evidence that defendant was in violation of his terms and conditions of probation. The court then stated, “I am not going to grant him any further reinstatement on probation.” Instead, the court imposed the original state prison sentence that was suspended.

The trial court sentenced defendant to state prison for a total of seven years, as follows: (1) midterm of three years for violating section 245, subdivision (a)(2); (2) midterm of four years on the section 12022.5, subdivision (a), enhancement. The court then gave defendant credit for 383 days actual time, and 57 days for conduct credit,

totaling 440 days. Furthermore, the trial court imposed a period of parole after confinement in state prison for three to four years.

II

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has filed two personal briefs. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

On January 24, 2012, defendant filed his first personal brief. In his two-page personal brief, with 15 pages of exhibits, defendant states that “the jury found me innocent of Penal Code § 245(a)(2) due to the firearm not being used and the resulting lack of a victim and asked for a lesser charge, however this was not allowed.” Therefore, defendant contends that his enhancement sentence was illegal since “there was no ‘proof of intent to assault’ anyone (see PC § 17500), nor any ‘proof of aggravation’ to enhance the sentence, under the Uniform Determinate Sentencing Act.” It appears, in essence, that defendant requests this modification because “there was conflicting evidence of the alleged weapon usage.”

We have reviewed defendant's contentions in his first personal brief. First, although defendant makes the assertion that the jury found him "innocent of Penal Code § 245(a)(2)," the record clearly indicates that the jury found him guilty of such a crime. Moreover, in the previous appeal, we addressed substantial challenges to the verdict and sentence, and affirmed the judgment. We, therefore, need not address defendant's contentions again.

On February 24, 2012, defendant filed a second personal brief, which we allowed. In his 14-page brief, defendant seems to contend that (1) the evidence was insufficient to revoke his probation; and (2) the evidence was insufficient to sustain his guilty verdict for assault with a firearm and the true finding that he personally used a firearm. As to defendant's challenge to the verdicts, we again reiterate that defendant already appealed from his judgment in case No. E047196. In our 18-page opinion, we affirmed the judgment. As to defendant's challenge to the revocation of his probation, we first note that the only evidence the trial court took into consideration when deciding on the revocation of probation was the search of defendant's premises, location of the glass pipes, and defendant's admission of using methamphetamine. As provided in detail above, we find substantial evidence that defendant indeed used methamphetamine and possessed drug paraphernalia, violations of his probation conditions. We, therefore, find no error in the trial court's decision to revoke defendant's probation.

We have now concluded our independent review of the record and found no arguable issues.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.