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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LEWIS LEE BREWER,

Defendant and Appellant.

E054083

(Super.Ct.No. FVI902118)

OPINION

APPEAL from the Superior Court of San Bernardino County. Elia V. Pirozzi,
Judge. Affirmed with directions.

Patrick E. DuNah, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Lewis Lee Brewer was charged by information with stalking (Pen. Code, § 646.9, subd. (b), count 1)¹ and being in contempt of court (§ 166, subd. (a)(1), count 2). The information also alleged that defendant had one prior strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), had served one prior prison term, within the meaning of section 667.5, subdivision (a), and one prior prison term, within the meaning of section 667.5, subdivision (b). Pursuant to a plea agreement, defendant pled no contest to count 1, in exchange for a suspended, four-year state prison term and felony probation. A petition to revoke probation was later filed alleging that defendant violated the probation term that he “[v]iolate no law,” after he was arrested for annoying/molesting a victim under the age of 18. (§ 647.6, subd. (a)(1).) That case went to trial (misdemeanor case No. MVI1101885), and the People moved to run the *Vickers*² hearing concurrent to the trial. A jury ultimately convicted defendant in the misdemeanor trial.

At a subsequent hearing, the court allowed defense counsel an opportunity to be heard before announcing its finding on the probation violation allegation.³ The victim in the instant case, defendant’s mother, testified. The court cited the conviction in case No. MVI1101885 and found that defendant was in violation of his probation. The court

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² *People v. Vickers* (1972) 8 Cal.3d 451.

³ The same court presided over defendant’s misdemeanor trial and the probation revocation hearing.

terminated probation and sentenced him to the previously suspended term of four years in state prison. He was awarded 154 days of presentence custody credits. That amount was subsequently modified to 156 days, pursuant to the granting of defendant's motion to correct custody credits.

Defendant filed a notice of appeal. We direct the trial court to dismiss count 2, the prior strike conviction, and the two prior prison allegations. In all other respects, we affirm the judgment.

BACKGROUND

Defendant was charged with, and pled no contest to, stalking. (§ 646.9, subd. (b).)

ANALYSIS

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 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case and two potential arguable issues: 1) whether defendant was afforded the minimal due process protections at the probation violation hearing; and 2) whether the court abused its discretion by failing to reinstate his probation and sentencing him to the suspended state prison term. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

Although not raised by the parties, we note a few apparent clerical errors. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made by a clerk, by counsel, or by the court itself. (*Ibid.* [judge misspoke].) A court “has the inherent power to correct clerical errors in its records at any time so as to make these records reflect the true facts. [Citations.]” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

In this case, the court neglected to dismiss count 2, the prior strike allegation, and the prior prison allegations. The plea agreement stated that defendant would plead guilty to count 1, in exchange for a four-year term in state prison, which would be suspended since he was to be placed on felony probation. There was no mention of the dismissal of count 2 or the priors in the plea agreement. Defendant pled no contest to count 1 on November 13, 2009. The court did not dismiss count 2 or the priors. Nonetheless, the minute order states that the court ordered “[p]rior # 1 [and] 3 stricken” and count 2 dismissed, on motion of the People. When defendant was subsequently found to be in violation of his probation, the court sentenced him to four years in state prison, in accordance with the plea agreement. Neither party mentioned the court’s failure to dismiss count 2 or the priors below or on appeal. There is no reference to count 2 or the prior allegations in the abstract of judgment. Thus, the record indicates that the parties intended the prior allegations and count 2 to be dismissed. It is evident the court’s failure

to order the dismissals was inadvertent. Accordingly, we will direct the trial court to dismiss count 2, the prior strike conviction, and the prior prison allegations.⁴

DISPOSITION

The trial court is directed to order the dismissal of count 2, the prior strike conviction, and the prior prison allegations. In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.

⁴ Although the court presiding over the probation revocation hearing mentioned that the strike conviction was previously stricken as part of the plea agreement, the reporter's transcripts of the plea and sentencing hearings does not so reflect. Thus, in the interest of clarity, we direct the trial court to dismiss the strike conviction.