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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.

ROLAND HOWARD,

Defendant and Appellant.

E056610

(Super.Ct.No. FVI1001089)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Roland Howard pled no contest to misdemeanor criminal threats. (Pen. Code, § 422.)¹ In exchange, defendant

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

was placed on probation for a period of two years on various terms and conditions.

Approximately two years later, defendant filed a motion to withdraw his plea and request to dismiss the complaint pursuant to section 1203.4. Defendant appeals from the denial of the section 1203.4 motion. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2010, defendant threatened to kill his wife.

On May 13, 2010, a felony complaint was filed charging defendant with one count of felony criminal threats. (§ 422.) The complaint further alleged that defendant had suffered one prior serious or violent strike conviction. (§§ 667, subs. (b)-(i), 1170.12, subd. (a)-(d).)

Following a preliminary hearing on May 26, 2010, the People moved to reduce the offense to a misdemeanor. (§ 17, subd. (b).) Defendant thereafter pled no contest to the offense as a misdemeanor and was placed on summary probation for a period of two years on various terms and conditions, including paying assessed fines and fees.

On May 14, 2012, defendant filed a motion to withdraw his plea and request to dismiss the complaint pursuant to section 1203.4, claiming he had successfully “fulfilled the terms of probation, paid all fines and fees, is not serving a sentence for any offense, is not on probation for any offense, nor is charged with any offense”

In a probation report dated June 12, 2012, the probation officer noted that, although defendant had no new arrests or convictions, the probation department was unable to determine whether defendant had complied with his obligation to pay his fees and fines. The probation department was also unable to determine whether defendant had

complied with the order to stay away from his wife, since defendant was not referred to the probation department.

At the hearing on the motion held on June 21, 2012, defense counsel argued that although there may have been a balance owed on a fine obligation, that balance was on a prior case and not this case. The trial court noted an outstanding obligation of \$655. The prosecutor argued that the motion should be denied due to the seriousness of the underlying charge, the fact that defendant had not registered as an arsonist in the prior case, and his failure to pay his fines. The trial court denied the motion without prejudice “in light of the fact the fines and fees have not been paid.”

DISCUSSION

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 conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

MILLER
J.