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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.

DEMETRIUS JOHNSON,

Defendant and Appellant.

E060946

(Super.Ct.No. FVI1303910)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin and Steve Malone, Judges. Affirmed.

Beatrice C. Tillman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Demetrius Johnson pleaded no contest to one count of residential burglary. Other counts were dismissed as part of a plea bargain. He filed an

amended notice of appeal, specifying that the appeal was based on the sentence or other matters arising after the plea. We affirm.

FACTS AND PROCEDURAL HISTORY

On or about November 28, 2013, sheriff's deputies were dispatched to a reported disturbance at a residence in Apple Valley. The victim had been in a dating relationship with defendant, but had ended the relationship about four months earlier. Defendant had stayed with the victim off and on while they were in a relationship, but defendant was no longer living in the residence. Shortly after midnight on November 28, defendant came to the residence and started banging on the front door. He demanded that the victim let him in and that she give him money for gas.

The victim refused defendant's demands. He proceeded to kick in the door and enter the residence. The victim was seated in the living room in her wheelchair when defendant burst in. Defendant had an unknown black object in his back pocket and he threatened to kill the victim. The victim was alarmed for her safety. When defendant went into the bedroom to search for money, the victim went to a neighbor's residence; the neighbor called police. The victim hid in the neighbor's residence until she saw defendant leave, carrying a plate of food and her landline telephone.

Defendant was charged in a criminal complaint with one count of residential burglary with a person present, one count of attempted residential burglary, one count of criminal threats, one count of criminal damage to property, and one count of severing a telephone line.

Before the preliminary hearing, defendant entered into a plea bargain wherein he agreed to plead no contest to a felony residential burglary (count 1), the remaining charges would be dismissed, and defendant would be admitted to probation. Among the terms and conditions of probation was the requirement that he serve 180 days in the county jail on work release. He was due to report to the jail in January 2014.

In February 2014, the People filed a petition for violation of defendant's probation. He had failed to report to his intake interview as scheduled, and had failed to report to the jail to serve his weekend custody time. The probation officer recommended modifying the conditions of defendant's probation to require him to serve 180 days straight time in the county jail.

Defendant admitted the violation of probation. He explained that he was living with his parents in Los Angeles County, and that he did not have transportation to and from San Bernardino County to serve his time. The probation officer opined that, under these circumstances, it was inappropriate for defendant to have agreed to serve weekends on work release. Defendant also said he wanted to go ahead and serve his time.

The trial court found that defendant had violated the terms of his probation, revoked and then reinstated probation on the modified term requested by the probation department: i.e., that defendant serve his 180 days in straight custody time.

In April 2014, the victim erroneously filed a misdemeanor appeal form on defendant's behalf, purporting to appeal from the judgment. Defendant's trial counsel filed a proper, amended notice of appeal on April 16, 2014, asserting that the appeal was

based on the sentence or other matters occurring after the plea. The amended notice of appeal requested appointment of counsel on appeal.

ANALYSIS

This court appointed counsel to represent defendant on appeal. Counsel has now 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 brief statement of the facts and procedural history, and identifying one possible issue on appeal: whether the trial court erred in modifying the terms of defendant's probation to require him to serve straight jail time rather than on weekends. Counsel has also requested this court to undertake an examination of the entire record to determine whether there are any arguable issues on appeal.

Defendant has been afforded the 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 conducted a review of the entire record and find no arguable issues.

The trial court properly modified the terms of defendant's probation. During the period of probation the court may revoke, modify, or change its order suspending imposition or execution of the sentence, as warranted by the defendant's conduct. (Pen. Code, §§ 1203.2 & 1203.3.)

It was logistically problematic for defendant to complete his jail time on work release, and he had already proven himself unreliable in that regard. In fact, defendant himself requested to serve straight time. The trial court did not modify the amount of jail

time defendant should serve; rather it modified the manner in which defendant would fulfill that condition of probation. (See *People v. Segura* (2008) 44 Cal.4th 921, 935 [“The circumstance that a plea agreement stipulates the defendant will be granted probation conditioned upon a specified term of incarceration does not deprive the trial court of all of its authority in matters of probation. . . . [W]hen probation is granted in the context of a plea agreement, ‘[a] punishment or related condition that is insignificant relative to the whole, such as a standard condition of probation, may be imposed whether or not it was part of the express negotiations.’ ”].) The requirement that defendant serve 180 days as a condition of probation was not a standard term of probation, but whether defendant was allowed to serve that time on weekends or as straight time was an insignificant change in relation to the whole scheme of probation terms. “ ‘ “A consummated plea bargain is not a perpetual license to a defendant to violate his probation. The plea bargain does not insulate a defendant from the consequences of his future misconduct. ‘A defendant gets the benefit of his bargain only once. Like time, a plea bargain once spent is gone forever.’ ” ’ [Citation.]” (*Id.* at p. 934.)

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.