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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.

RICHARD LAURENCE OLDS,

Defendant and Appellant.

E065835

(Super.Ct.No. FVI1403109)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin, Judge. Affirmed with directions.

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

No appearance for Plaintiff and Respondent.

Defendant and appellant Richard Laurence Olds was charged by amended information with evading an officer with willful disregard (Veh. Code, § 2800.2, subd. (a), count 1), driving while under the influence of alcohol (Veh. Code, § 23152,

subd. (a), count 2), and driving with a blood-alcohol content of 0.08 percent (Veh. Code, § 23152, subd. (b), count 3). The amended information also alleged that defendant had one prior strike conviction (Pen. Code, §§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)) and had served five prior prison terms (Pen. Code, § 667.5, subd. (b)). Defendant filed a *Marsden*¹ motion, which a trial court denied. Defendant then requested to represent himself, and the court granted the request. Following trial, a jury found defendant guilty of all three charges. Defendant then admitted the prior strike allegation and one prior prison allegation. The prosecutor moved to dismiss the other prior prison allegations. The court sentenced defendant to three years on count 1, doubled pursuant to the prior strike, plus one year on the prior prison enhancement, for a total of seven years in state prison. The court ordered the terms on counts 2 and 3 to run concurrent to the term on count 1.

Defendant filed a timely notice of appeal, in propria persona, based on the sentence or other matters occurring after the plea. Appellate counsel then filed an amended notice of appeal. We direct the superior court clerk to correct clerical errors in the minute order and abstract of judgment. Otherwise, we affirm.

PROCEDURAL BACKGROUND

On the night of August 13, 2014, Officer Scott LaFond was on patrol and observed a vehicle traveling 71 miles an hour on a road with a speed limit of 50 miles an hour.

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

The driver, later identified as defendant, looked in Officer LaFond's direction, and Officer LaFond looked at him. Defendant kept driving, so Officer LaFond followed him. Defendant failed to stop at a stop sign, and Officer LaFond activated his lights and siren to initiate a traffic stop. Defendant continued to drive at speeds up to 90 miles an hour and drive through intersections without stopping. Eventually, he drove in to a field and crashed into a chain-link fence. Officer LaFond stopped his patrol car and observed defendant and a female run from the vehicle. Defendant ran through the field, and Officer LaFond chased him. Defendant eventually stopped and put his hands in the air. He had an odor of alcohol emitting from his breath, and his eyes were watery. The officer had defendant take a breathalyzer test, and it showed that he had a 0.10 percent blood-alcohol content.

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 and one potential arguable issue: whether the court abused its discretion in imposing the upper term of three years on count 1 and doubling it to six years. 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.

However, we note an apparent clerical error. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808 (*Schultz*.) 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 so as to make these records reflect the true facts.” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

At the sentencing hearing, the trial court sentenced defendant to three years in state prison on count 1, doubled pursuant to the prior strike. The court imposed an additional one year on the prior prison enhancement (§ 667.5, subd. (b)), for a total of seven years in prison. Notwithstanding the oral pronouncement of judgment, the minute order states that the court imposed six years on count 1 and that the total term was simply six years in prison. The minute order does not mention the additional one year imposed on the prior prison enhancement. The abstract of judgment also fails to mention the prior prison enhancement, and it states that the total term imposed was six years.

“Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) Since the court here imposed an additional one year on the prior prison enhancement, the clerk’s notation in the minutes that the total term imposed was six years is inaccurate. The record shows that the trial court imposed a

total term of seven years in state prison, which consisted of six years on count 1 plus one year on the prison prior. Accordingly, we shall direct the superior court clerk to correct the sentencing minute order and abstract of judgment to reflect the judgment the court pronounced.² (*Schultz, supra*, 238 Cal.App.2d at p. 807.)

DISPOSITION

The superior court clerk is directed to generate a new minute order reflecting that the April 8, 2016 minute order failed to mention that the court imposed a one-year term on the prior prison enhancement, and that the court actually imposed a total term of seven years in state prison, which consisted of six years on count 1 plus one year on the prison prior. The clerk also is directed to correct the abstract of judgment to reflect the one-year prior prison enhancement imposed, as well as the total time imposed as seven years. The clerk is further directed to forward a copy of the new minute order and amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST
J.

We concur:
RAMIREZ
P. J.

MILLER
J.

² Appellate counsel previously requested the superior court to correct the sentencing minute order and abstract of judgment on other matters, and the court did so. However, the clerical errors pointed out in this opinion were not addressed.