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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVONTE DYRELL HARPER,

Defendant and Appellant.

F064320

(Super. Ct. No. F10901349)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Gomes, Acting P.J., Poochigian, J. and Franson, J.

STATEMENT OF THE CASE

On April 6, 2010, appellant, Javonte Dyrell Harper, waived his constitutional rights and pleaded no contest to the charge that he carried a loaded firearm (Pen. Code, § 12031, subd. (a)(1))¹ and he admitted he was not the registered owner of the gun (§ 12031, subd. (a)(2)(F)). On June 28, 2010, the trial court placed appellant on probation, suspending imposition of sentence. The court ordered appellant to spend 90 days in jail, with 34 days of custody credits and 34 days of conduct credits. The court imposed a \$200 restitution fine. On October 13, 2010, July 11, 2011, and September 7, 2011, appellant admitted violating the terms and conditions of his probation. The court reinstated appellant's probation.

On January 3, 2012, appellant waived his right to a hearing and admitted violating his probation by failing to take drug tests in 2011 on September 20th, October 4th, October 11th, and October 25th. Appellant admitted he had positive drug tests for marijuana in 2011 on September 13th and September 17th. Appellant also admitted failing to appear for appointments scheduled by the probation department and failed to provide proof of attendance to Alcoholics Anonymous or Narcotics Anonymous meetings.

The court revoked appellant's probation and sentenced him to county jail for the mitigated term of 16 months pursuant to section 1170, subdivision (h). Appellant was granted actual custody credits of 54 days and conduct credits of 54 days for total credits of 108 days. The court lifted the stay on appellant's fine pursuant to section 1202.45. Appellant filed a timely notice of appeal. The court denied appellant's request for a certificate of probable cause.

¹All statutory references are to the Penal Code.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on April 26, 2012, we invited appellant to submit additional briefing. On May 3, 2012, we received a response from appellant seeking recalculation of his custody credits. Appellant, however, failed to comply with section 1237, subdivision (a) by seeking review of this claim first with the trial court. When an appellant seeks only review of custody credits, it is not cognizable on review.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The trial court's victim restitution order is affirmed.