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

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ANTHONY GRILLO,

Defendant and Appellant.

F067839

(Super. Ct. No. 1458528)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Dawna F. Reeves, Judge.

Monique Q. Boldin, 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 Cornell, Acting P.J., Gomes, J. and Franson, J.

A jury convicted appellant, Jason Anthony Grillo, of diversion of construction funds (count 1/Pen. Code, § 484b) and grand theft by false pretenses (count 2/Pen. Code, § 487, subd. (a)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2012, Modesto Christian School was celebrating their 50th anniversary and decided to add bleachers to its football stadium to increase the seating capacity by almost 1,000 seats. The project had a completion deadline in September 2012. In June 2012, Chief Executive Officer, Pastor Lance Lowell, asked Andrew Strickland, the Director of Facilities at the school, to find a contractor to do the work. Strickland received three bids from companies who agreed to meet the deadline and he selected JoGo Equipment (JoGo), which allegedly had a corporate office in Vallejo but showed only a post office box for that location. Strickland communicated through an e-mail address and telephone number that were on the JoGo Web site with a man who identified himself as Paul Thomas. Eventually, they agreed on a price of \$49,533 for the bleachers and \$12,000 for the installation, and that the bleachers would be completed by September 25, 2012.

On August 28, 2012, Pastor Lowell sent JoGo a check made out to JoGo Equipment for \$49,533 to an address in Ohio that turned out to be the address for an apartment belonging to Grillo's mother. After the bleachers were not installed by September 21, 2012, Strickland contacted Thomas. Thomas attributed the delay in providing the bleachers to manufacturing delays and to the school's request that the bleachers not have aisles, which allegedly violated the International Building Code. Nevertheless, he agreed to supply rental bleachers for the week of homecoming and for the school's 50th anniversary celebration and that JoGo would pay for them. However, although the rental bleachers were installed in time for these events, JoGo did not pay for them, and the school had to pay \$1,000 to the rental company.

In November 2012, the school received an e-mail from an Alex Diamond from JoGo stating that JoGo had been purchased by a venture capitalist corporation and that they would be out of production for three weeks. The permanent bleachers, however, were never delivered and the school had to have another company build them. School officials never spoke with Grillo or received any e-mails from him.

Pastor Lowell became concerned when he got a copy of the canceled check he issued to JoGo with the initials J. G. on it, rather than P. T. for Paul Thomas. He started calling the telephone number listed on JoGo's Web site and left messages until the mailbox was full, but he did not receive a reply.

Meanwhile, on August 29, 2012, Grillo deposited the school's \$49,533 in a business checking account for JoGo at a Wells Fargo Bank in Fort Lauderdale, Florida. By September 10, 2012, he had withdrawn \$49,482.13 from the account, including transfers totaling \$39,800 to his personal Well Fargo checking account and a cash withdrawal of \$9,500. From August 30, 2012, through September 10, 2012, Grillo withdrew \$41,285.44 from his Wells Fargo personal account, including withdrawals of \$14,976 and \$14,768.80 that he made at Caesar's Palace in Las Vegas, Nevada.

On May 28, 2013, the district attorney filed an information charging Grillo with the two counts he was convicted of.

On July 24, 2013, the jury rendered its verdict in this matter.

On August 16, 2013, the court sentenced Grillo to a two-year local term on his diversion of construction funds conviction and a stayed two-year local term on his grand theft conviction.

Grillo's appellate counsel has filed a brief, which summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Grillo has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.