

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR ERNESTO GARCIA, JR.,

Defendant and Appellant.

G048875

(Super. Ct. No. 12CF1413)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson, Judge. Affirmed.

Oscar Ernesto Garcia, Jr., in pro. per.; and Sarah A. Stockwell, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

\* \* \*

Defendant Oscar Ernesto Garcia, Jr., was sentenced to a state prison term of seven years after the court found he had violated the terms and conditions of his probation. Defendant timely filed a notice of appeal, and we appointed counsel to represent him. Counsel did not argue against defendant, but advised the court he was unable to find an issue to argue on defendant's behalf. Defendant was given the opportunity to file written argument in his own behalf, and he has done so, submitting a one-page handwritten brief.

We have examined the entire record, and have considered the brief submitted by defendant, but have not found an arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Accordingly, we affirm the judgment.

#### FACTS AND PROCEDURAL HISTORY

On August 8, 2012, defendant pleaded guilty to one count each of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> and street terrorism (§ 186.22, subd. (a)). Defendant also admitted he committed the assault “for the benefit of and in association with ETC [Evil Thug Crowd], a criminal street gang, with the specific intent to promote, further, and assist in criminal conduct by members of that gang.” (§186.22, subd. (b)(1).) As part of the plea agreement, the People dismissed a charge of conspiracy and other charges of aggravated assault. The court suspended imposition of sentence and placed defendant on three years of formal probation subject to various terms and conditions, including 181 days in jail, and that he “violate no law.” Defendant was given custody credit for 181 days, resulting in his immediate release on probation.

---

<sup>1</sup>

All further statutory references are to the Penal Code.

Less than one month later, on September 3, 2012, defendant “hit up” an individual named Endy Montoya, asking him, “Are you from A.S. [Altadena Street gang]?” When Montoya answered “no,” defendant said, “Oh, you want to get fucked up?” Defendant then proceeded to punch Montoya in the face several times. Montoya was knocked to the ground, and defendant’s two companions joined in the fray, kicking Montoya in the face.

Defendant was arrested for the assault and battery, and the probation department filed a petition alleging the new assault violated defendant’s probation conditions. Defendant was tried on the alleged probation violation. The court found defendant to be “in violation of the terms and conditions of his probation.” Specifically, the court ruled that defendant violated the law on September 3, 2012, by the commission of “a variety of different crimes. Namely, Penal Code section 240, 242, and 186.22[, subdivision (d)].” The People dismissed the new assault and battery case, and the court set the matter for sentencing.

After receiving and considering a probation and sentencing report, the court denied probation and sentenced defendant to a total state prison term of seven years, comprised of the low term of two years for the assault with a deadly weapon, plus a five-year gang enhancement pursuant to section 186.22, subdivision (b). The court also imposed a one-year term on the street terrorism count, but stayed that sentence pursuant to section 654. Defendant was given 857 days of custody credits.

## DISCUSSION

Defendant’s appellate counsel has suggested we review the record to determine whether the evidence was sufficient to support the court’s finding that defendant violated the terms and conditions of probation, and whether the court abused its discretion by not reinstating defendant’s probation. But by filing a brief pursuant to

*People v. Wende*, supra, 25 Cal.3d 436, counsel represents that after a thorough review of the record, she was unable to identify an arguable issue. We disregard the potential issues suggested by counsel because, by the very nature of a *Wende* brief, counsel is unable to provide supporting arguments. Issues not supported by reasoned argument need not be addressed. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.) In any event, in the course of conducting our independent review, we have considered the potential issues suggested by counsel and conclude neither of them raises an arguable issue. Counsel's assessment is correct.

As noted, defendant filed a supplemental brief. We must consider each of the issues personally raised by defendant. (*People v. Kelly* (2006) 40 Cal.4th 106, 124.) Defendant's supplemental brief weaves many statements and questions together, raising issues that sometimes overlap, but defendant has not developed a reasoned argument on any of them. As best as we can understand defendant's supplemental brief, he raises approximately six issues, most of which reflect a misunderstanding of the law. We address each issue in turn.

1. Defendant complains he "was violated for a case that was dismissed." The assault and battery in September 2012 resulted in a new criminal charge and well as the petition on the probation violation. At the conclusion of the trial on the probation violation, the court granted the People's motion to dismiss the new criminal charge. The probation violation was proved by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441 ["Considerations of both law and policy dictate that the facts in a probation revocation hearing be provable by a preponderance of the evidence"].) The fact that the prosecutor chose to dismiss the criminal charge is irrelevant to the finding that a probation condition had been violated. The dismissal of the criminal charge benefitted defendant; it did not harm him.

2. Defendant contends he did not get a jury trial on the new offense. But the new offense was not tried; it was dismissed. The conduct constituting the basis of the new offense was also the alleged basis of the probation violation. However, the issue was tried as a probation violation, for which the burden of proof is preponderance of the evidence, and for which defendant is not entitled to a jury trial. (*People v. Youngs* (1972) 23 Cal.App.3d 180, 188, fn. 6, disapproved on a different point in *People v. Vickers* (1972) 8 Cal.3d 451, 453, fn. 2.)

3. Defendant asserts he was “convicted,” “based on a lot of hearsay.” He asks rhetorically, “[S]houldn’t my word be good enough to go against the witness word?” In our review of the record, we have not found any hearsay evidence to have been erroneously admitted during the hearing. And, we note, defendant did not testify, so there was no “word” of his to evaluate for credibility.

4. Defendant also complains that the charges against his codefendants on the new assault and battery case were dismissed for lack of evidence. First, the appellate record contains no information regarding the disposition of the charges against the codefendants. Second, defendant’s charges on the new offense were likewise dismissed.

5. Defendant also contends he pleaded guilty to the original offense because it allowed him to go home, and his lawyer told him he was not signing a “joint suspension.” This argument challenges the validity of the underlying plea, and is precluded by defendant’s failure to obtain a certificate of probable cause. (See § 1237.5.)

6. Finally, defendant argues that if he had known he was signing a “joint suspension,” he would have gone to trial. This again challenges the validity of the original plea, an argument precluded by his failure to obtain a certificate of probable cause.

Our independent review of the record has not disclosed an arguable issue. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.