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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER GALVAN, JR.,

Defendant and Appellant.

G049422

(Consol. with G049425)

(Super. Ct. Nos. 11CF2417 &
13CF0447)

O P I N I O N

Appeals from judgments of the Superior Court of Orange County,
Walter P. Schwarm, Judge. Affirmed.

William W. Lee, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

* * *

1. Introduction

Javier Galvan, Jr., filed a notice of appeal (case No. G049422) from the judgment entered in Orange County Superior Court case No. 11CF2417 and a notice of appeal (case No. G049425) from the judgment entered in Orange County Superior Court case No. 13CF0447 after he pleaded guilty in the latter case to probationer in possession of a firearm in violation of Penal Code section 29815, subdivision (a) (further code references are to the Penal Code). We ordered the appeals consolidated.

Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), appointed counsel identified two potential issues to assist us in conducting our independent review (see *People v. Kent* (2014) 229 Cal.App.4th 293, 296). Galvan was granted 30 days to file written arguments in his own behalf, but did not file anything.

We have conducted an independent review of the entire record and have considered counsel's *Wende/Anders* brief. After considering the entire record, we have found no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

2. Background

a. Case No. 11CF2417

In case No. 11CF2417, a felony complaint filed in September 2011 charged Galvan with one count (count 3) of carjacking in violation of section 215, subdivision (a) and one count (count 5) of street terrorism in violation of section 186.22, subdivision (a). The felony complaint alleged an enhancement under section 186.22, subdivision (b) (section 186.22(b)), specifically, that Galvan committed count 3 “for the benefit of, at the direction of, and in association with LOPERS, a criminal street gang.”

In June 2012, Galvan pleaded guilty to counts 3 and 5 pursuant to a plea agreement. On the plea form, as facts serving as the basis for the plea, Galvan wrote: “9-2-11, I unlawfully committed a car jacking by taking a motor vehicle from the victim by use of force and fear. Further, I unlawfully and actively participated as a gang member in Lopers, a criminal street gang, with knowledge that its members have engaged in a pattern of criminal gang activity with the intent to promote further and assist felony criminal conduct.”

The trial court accepted the plea, found Galvan knowingly, intelligently, and voluntarily waived his constitutional rights, and found the allegations of counts 3 and 5 true beyond a reasonable doubt. Pursuant to section 17, subdivision (b), the court granted the prosecution’s motion to reduce count 5 to a misdemeanor. The court also dismissed the enhancement allegation. In accordance with the plea agreement, the court sentenced Galvan to the midterm of five years in prison on count 3, but suspended execution of sentence and placed Galvan on three years of formal probation. As a term of probation, Galvan was ordered to serve 317 days in jail, with total credit of 317 days.

b. *Case No. 13CF0447*

In case No. 13CF0447, a felony complaint filed in February 2013 charged Galvan with a single count: probationer in possession of a firearm in violation of section 29815, subdivision (a). The felony complaint alleged an enhancement under section 186.22(b). The felony complaint also alleged a prior conviction for violating section 215, subdivision (a) in case No. 11CF2417 (with a section 186.22(b) enhancement), and that prior conviction was for a serious felony pursuant to section 667, subdivision (a)(1).

In April 2013, Galvan pleaded guilty to the count alleged in case No. 13CF0447, admitted the section 186.22(b) enhancement, and admitted the allegations of a prior conviction for a serious felony. On the plea form, as facts serving as the basis

for the plea, Galvan wrote: “2-19-13, I unlawfully possessed a firearm having suffered a prior felony conviction. I committed this crime for the benefit of Lopers with the intent to promote the gang[']s activities. Lopers is a criminal street gang.”

The trial court accepted the guilty plea, found Galvan knowingly, intelligently, and voluntarily waived his constitutional rights, and found a factual basis for the plea. The court found Galvan to be in violation of his probation in case No. 11CF2417, sentenced him to a term of 16 months in prison in case No. 13CF0447, and lifted the stay of execution of sentence in case No. 11CF2417. The court granted the prosecution’s motion to dismiss the section 667, subdivision (a) allegation of conviction for a prior serious felony.

At the sentencing hearing on July 16, 2013, the trial court granted the prosecution’s motion to dismiss the section 186.22(b) enhancement for purposes of sentencing. In case No. 11CF2417, the trial court revoked probation and ordered into effect the sentence of five years in prison on count 3, which previously had been stayed. The court imposed a jail term of 180 days on count 5, concurrent to the sentence on count 3. In case No. 13CF0447, the trial court pronounced sentence of 16 months in prison, consecutive to the sentence imposed in case No. 11CF2417. The aggregate sentence imposed was six years four months.

Galvan’s counsel argued that Galvan should receive presentence custody credit “at half time” for his time served in jail as part of his initial probationary sentence in case No. 11CF2417. Counsel also argued those credits should be applied toward both his five-year sentence on count 3 in case No. 11CF2417 and his 16-month sentence in case No. 13CF0447. The court continued the sentencing hearing “to finalize credits and the equal protection issue.” (Boldface omitted.)

The sentencing hearing resumed on July 23. Galvan’s counsel argued that Galvan should receive “day-for-day” time-served credit pursuant to section 4019, subdivision (f), rather than 15 percent credit pursuant to section 2933.1, and that

awarding him 15 percent credit under section 2933.1 would deny him equal protection. The trial court rejected Galvan's equal protection argument and concluded that time-served credit would be calculated at 15 percent pursuant to request to section 2933.1, subdivision (c). Using section 2933.1, subdivision (c), the trial court calculated a total of 508 days of credit based on 442 actual days and 66 conduct days. The court stated: "For the record, the court is applying all of Mr. Galvan's credits on the principal term on case [No.] 11CF2417, calculated at the rate of 15 percent. The conduct credits calculated at 15 percent are based on his conviction for a violent felony, case [No.] 11CF2417."

c. Notices of Appeal

Galvan attempted to file a notice of appeal and an amended notice of appeal from the judgment entered in case No. 11CF2417 and a notice of appeal and an amended notice of appeal from the judgment entered in case No. 13CF0447. The superior court clerk declined to file the notices of appeal on the ground they were untimely. We granted Galvan's petitions for writ of habeas corpus and directed the superior court clerk to file the notices of appeal.

3. Discussion

With the aid of counsel's brief, we have reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no arguable issues on appeal. Counsel has suggested two issues: (1) "Whether the trial court erred in ordering that appellant receive only 15% conduct credit pursuant to Penal Code section 2933.1" and (2) "Whether the trial court erred in denying appellant's request to receive credits in case number 13CF0447." (Some capitalization omitted.) Neither suggested issue has merit.

4. Disposition

The judgments are affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.