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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.

JEFFREY JOSEPH CLODY,

Defendant and Appellant.

G050021

(Super. Ct. No. 13CF0408)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Appeal dismissed.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

On July 31, 2013, defendant and appellant Jeffrey Joseph Clody pleaded guilty to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and admitted various sentence enhancement allegations. The court sentenced Clody to five years in prison, but suspended execution of that sentence and placed Clody on probation.

On October 29, 2013, a petition for arraignment on probation violation was filed which alleged various new law violations. After a contested hearing, the court found Clody in violation, revoked probation, and ordered the previously imposed five year prison sentence executed. This appeal followed.

After Clody appealed we appointed counsel to represent him. Counsel filed a brief which set forth a statement of the case and the facts. He did not argue against Clody, but advised he had not found any issues to argue on Clody's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Clody was given 30 days to file written argument on his own behalf. That period passed and we received no written argument from Clody.

However, on November 13, 2014, we received a handwritten letter from Clody, which stated: "To Judge Leary [sic]. I no longer wish to continue my case. Please throw out all further proceedings. I give consent to Judge Leary [sic] to throw out the case." There was no proof of service so we sent a copy of the letter to his counsel.

We also advised Clody's counsel we intended to treat Clody's letter as an abandonment of the appeal under California Rules of Court, rule 8.316(a), and invited counsel to file any objection to or comment on the intended procedure. A few days later, counsel filed a motion to strike Clody's opening brief and file new opening brief.

On November 25, 2014 we received a letter from Clody's counsel which stated: "I agree with the Court's proposal to treat the appeal as abandoned based upon Mr. Clody's letter to the Court. I therefore withdraw all pending motions and request the Court treat the appeal as abandoned, dismiss the appeal, and issue an immediate remittitur to the trial court."

**DISCUSSION**

We construe Clody's letter to be an abandonment of his appeal. (Cal. Rules of Court, rule 8.316(a).) Therefore, we exercise our discretion to dismiss the appeal and direct immediate issuance of the remittitur. (Cal. Rules of Court, rule 8.316(b)(2).) Our decision is final on filing. (Cal. Rules of Court, rule 8.316(b)(2)(B).)

**DISPOSITION**

The appeal is dismissed. Our decision is final on filing and the clerk of this court is directed to issue the remittitur immediately.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.