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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.

RICKY DELAROSA FERNANDEZ,

Defendant and Appellant.

G051565

(Super. Ct. No. R00852)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

William G. Holzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Ricky Delarosa Fernandez on appeal. Counsel filed a brief that provided the facts of the case. Counsel did not argue against his client but advised the court he found no issues to argue on his behalf. Fernandez was given 30 days to file written argument on his own behalf. That time has passed, and Fernandez did not file a brief.

Counsel filed a brief following the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). The court in *Wende* explained a *Wende* brief is one that sets forth a summary of proceedings and facts but raises no specific issues. Under these circumstances, the court must conduct an independent review of the entire record. When appellant himself raises specific issues in a *Wende* proceeding, we must expressly address them in our opinion and explain why they fail. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 120, 124.)

Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), to assist the court with its independent review, counsel provided the court with information as to one issue that might arguably support an appeal—whether there was sufficient evidence to prove Fernandez willfully failed to report to probation. We have reviewed the record in accordance with our obligations under *Wende* and *Anders*. We found no arguable issues on appeal. The judgment is affirmed.

FACTS

On September 2, 2014, Fernandez was released from custody in Orange County. He was ordered to report to probation within 24 hours if it was a business day. The prosecution conceded that if the release date was not a business day, Fernandez was to report within 72 hours of release. Fernandez did not report as directed. A visit by the probation officer to Fernandez’s listed address was unsuccessful. Fernandez was arrested “a short time thereafter” in Los Angeles County on an unrelated matter. The probation officer did not know what date Fernandez was arrested in Los Angeles County. During a discussion regarding credit for time served, defense counsel indicated her records showed

Fernandez had been in custody in the Los Angeles County jail since September 15, 2014. An Orange County warrant for Fernandez's arrest was issued on November 3, 2014. It was served on him while he was in custody in Los Angeles County jail. On December 26, 2014, Fernandez was brought to the Orange County jail on the warrant.

On December 29, 2014, the Orange County Probation Department filed a Petition for Revocation of Community Supervision, alleging Fernandez failed to report to his probation officer. Fernandez had two previous violations. On November 20, 2013, he was given a 90-day sentence and on June 3, 2013, he was given a 120-day sentence.

On February 6, 2015, the trial court held a contested hearing. The court found Fernandez in violation of his supervision. The court reinstated supervision and imposed 180 days of custody, with credit for time served of 86 days. Upon release, the court ordered him to enroll in and complete a drug program as approved by his probation officer. Fernandez filed a timely notice of appeal.

DISCUSSION

“Where a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant's conduct was not contumacious, revoking probation and imposing a prison term are reversible error.” (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) A probationer's failure to report within 24 hours of release may be excused on the following grounds: (1) the probationer was immediately deported upon release; (2) a phone call or e-mail would not satisfy the reporting requirement; and (3) the government could not prove the probationer had been in the country for more than 24 hours before the later arrest. (See *People v. Galvan* (2007) 155 Cal.App.4th 978, 980-983.)

Here, appellate counsel suggests Fernandez's failure to report may not have been willful because once he was arrested in Los Angeles he was unable to physically report in Orange County. Counsel also questions whether the prosecution was required to

prove Fernandez's arrest in Los Angeles occurred "after the full 72 hour period he had to report to Orange County."

The record indicates Fernandez was ordered to report within 24 hours if his release date was a business day. September 2, 2014, was a Tuesday, the day after Labor Day, a business day. This arguably means Fernandez was to report within 24 hours. He did not. Even if he was to report within 72 hours, it is of no consequence to Fernandez. The record reflects Fernandez was released from custody in Orange County on September 2, 2014, and entered custody in Los Angeles County on September 15, 2014. We conclude Fernandez's failure to report was willful.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.