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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT EUGENE ROJAS,

Defendant and Appellant.

H037708

(Santa Clara County

Super. Ct. No. C1087129)

Defendant Robert Rojas appeals from a judgment following a contested probation revocation hearing and imposition of a three year prison sentence for inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a), count two) and unlawful sexual intercourse with a minor more than three years younger (Pen. Code, § 261.5, subd. (c), count three). Defendant's counsel has filed an opening brief in which no issues are raised. Counsel asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.)

On May 30, 2012, defendant was notified of his right to file a supplemental brief within 30 days. That time has passed and we have not received any response from defendant. Upon independent review of the record, we find no arguable issues and affirm the trial court's judgment.

### *Background*

On February 4, 2011, pursuant to a negotiated disposition defendant pleaded no contest to one count of inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a), count two) and one count of unlawful sexual intercourse with a minor more than three years younger (Pen. Code, § 261.5, subd. (c), count three).<sup>1</sup> In exchange for his no contest pleas defendant was promised a one year county jail sentence, the dismissal of a felony assault charge (Pen. Code, § 245, subd. (a)(1), count one), three years formal probation with "standard domestic violence conditions."

On March 7, 2011, in accordance with the terms of the negotiated disposition, the court suspended imposition of sentence and placed appellant on formal probation for a period of three years on certain conditions, including that he serve 365 days in county jail. The court awarded him credit for time served of 356 days. Appellant was ordered to complete a certified 52 week domestic violence program. On motion of the prosecutor the court dismissed count one.<sup>2</sup>

Thereafter, on September 15, 2011, the probation department filed a petition for modification of the terms of defendant's probation alleging that he committed seven technical violations of the terms and conditions of his probation.<sup>3</sup>

On November 22, 2011, following a contested probation revocation hearing at which defendant represented himself, and defendant's probation officer testified, the court found defendant to have violated his probation. The court refused to reinstate defendant's probation and sentenced him to the middle term of three years on count two and a concurrent middle term of two years on count three. The court imposed a previously suspended probation revocation fine of \$220 and imposed but suspended a parole revocation fine. The court awarded defendant 558 days credit for time served, based on

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<sup>1</sup> Count two was alleged to have occurred on September 9, 2010, and count three between August 1, 2009 and September 2, 2010.

<sup>2</sup> Defendant represented himself throughout the course of this case.

<sup>3</sup> It was alleged that defendant failed to report for scheduled office visits, failed to provide contact information, failed to make himself available for search and seizure, and failed to provide proof of enrollment in various programs.

279 actual days and 279 days conduct credit pursuant to the version of Penal Code section 4019 that applied to defendant's case.

Defendant filed a timely notice of appeal.

On May 15, 2012, in response to a letter from appellate counsel, the court ordered that an amended abstract of judgment be issued awarding defendant a total of 560 days credit for time served, based on 280 actual days and 280 days of conduct credit.

#### *Discussion*

Upon review of the record, we discern no arguable issues. Defendant had a full and fair opportunity to present his case to the court. The court's finding that defendant violated his probation is amply supported by the record. (See *People v. Urke* (2011) 197 Cal.App.4th 766, 772 [standard of proof in revocation proceedings is preponderance of the evidence].) The court acted well within its discretion in refusing to reinstate probation and imposing a state prison sentence. (*Id.* at p. 773 [granting and revoking probation are discretionary with the court].)<sup>4</sup>

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<sup>4</sup> "Probation revocation proceedings are not a part of a criminal prosecution, and the trial court has broad discretion in determining whether the probationer has violated probation." (*People v. DeGuzman* (1995) 33 Cal.App.4th 414, 419.)

*Disposition*

The judgment is affirmed.

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ELIA, Acting P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MÁRQUEZ, J.