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

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY JOSEPH DEAN,

Defendant and Appellant.

H037746

(Monterey County

Super. Ct. No. SS110839)

Defendant Gary Joseph Dean appeals from a judgment of conviction entered after he pleaded no contest to taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a) - count one) and evading an officer with willful disregard (Veh. Code, § 2800.2 - count two). Defendant also admitted that he had suffered a prior prison term within the meaning of Penal Code section 666.5, subdivision (a) as alleged in count one. He was sentenced to four years and eight months in state prison and filed a timely notice of appeal.

I. Statement of Facts

On February 27, 2011, defendant stole a car and was driving it in Monterey County. A uniformed police officer was driving behind defendant in a marked car. When the officer turned on his siren and lights, defendant "floored it," went through two stop signs, and crashed the car.

II. Statement of the Case

On April 28, 2011, a complaint was filed. Defendant was charged with taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a) - count one), evading an officer with willful disregard (Veh. Code, § 2800.2, subd. (a) - count two), driving under the influence with two prior convictions (Veh. Code, § 23152, subd. (a) - count three), driving while having a .08 percent or higher blood alcohol level with two prior convictions (Veh. Code, § 23152, subd. (b) - count four), driving with a suspended license for drunk driving with one prior conviction (Veh. Code, § 14601.2, subd. (a) - count five), and driving with a suspended license for refusal to take a blood alcohol test or excessive blood alcohol level with one prior conviction (Veh. Code, § 14601.5, subd. (a) - count six). In connection with count one, three auto thefts with a prior conviction were alleged pursuant to Penal Code section 666.5, subdivision (a). As to counts one and two, eight prison priors were alleged pursuant to Penal Code section 667.5, subdivision (b). The following day, the trial court issued an arrest warrant.

On October 18, 2011, defendant waived formal arraignment and entered a plea of not guilty. On November 9, 2011, defendant was advised of his rights to a jury trial, to remain silent, to confront witnesses against him, and to present evidence on his behalf. After waiving his rights, defendant entered a no contest plea to counts one and two and admitted the allegation pursuant to Penal Code section 666.5, subdivision (a) as alleged in count one. In exchange for defendant's plea, the remaining counts were dismissed and the maximum penalty was set at four years and eight months. The trial court sentenced defendant to four years on count one and eight months on count two.

III. Discussion

Appointed appellate counsel has filed an opening brief that states the case and the facts but raises no issues. Defendant has submitted written argument on his own behalf.

Defendant contends that trial counsel had assured him that he would “receive all of [his] presentence credits” at sentencing, but the trial court erred in failing to award presentence credits.¹

Here, the probation report states that when defendant was arrested, he had absconded from parole supervision as of October 21, 2011. Accordingly, a parole hold was placed upon him. On October 28, 2011, defendant accepted a 180-day parole revocation commitment. His parole revocation release date was January 14, 2012. Since the conduct underlying his parole violation was independent of the criminal conduct arising from the present case, he was not entitled to accrue credits until January 15, 2012. (*People v. Bruner* (1995) 9 Cal.4th 1178.) Thus, the trial court did not err.

Defendant next argues that the trial court erred by sentencing him on count one to the upper term of four years for a violation of Vehicle Code section 10851 when the upper term for this offense is three years.

In connection with count one, defendant admitted the allegation that he had previously been convicted of auto theft pursuant to Penal Code section 666.5, subdivision (a). This statute sets the punishment as two, three, and four years. Thus, there was no error.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

¹ Defendant does not claim that he would not have entered his plea if he had known that he was not entitled to presentence credits.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Márquez, J.