

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ROBERT WILCOX,

Defendant and Appellant.

H037915

(Santa Cruz County

Super. Ct. No. F21280)

Defendant Paul Robert Wilcox was convicted by a jury of deterring an executive officer (Pen. Code, § 69).¹ The jury deadlocked on a second charge of arson (§ 451, subd. (c)) and found Wilcox not guilty on a charge of attempt to burn (§ 455). The trial court dismissed the arson charge after the prosecution indicated it would not proceed with a retrial. On January 26, 2012, Wilcox was sentenced to 270 days in county jail and five years probation, with custody credits of 93 days. The court imposed a \$200 restitution fine, a \$40 court security fee and a \$30 court facilities fee. The court also imposed and stayed a \$200 probation revocation fine. Wilcox timely appealed.

On July 5, 2012, the court terminated Wilcox's probation for absconding.

We appointed counsel to represent Wilcox in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. We notified Wilcox of his right to submit written argument in his own behalf within 30 days. That period has elapsed, and we have received no written argument from Wilcox.

¹ Further unspecified statutory references are to the Penal Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 2011, City of Santa Cruz firefighters responded to a grass fire at Natural Bridges State Park. Firefighters did not see anyone in the area of the fire.

Brad Self, a close friend of Wilcox's, spoke to Cal Fire Battalion Chief Jake Dellamonica about the fire on July 28 and August 2, 2011. Self was with Wilcox at Natural Bridges State Park the morning of July 20, 2011, and Wilcox told Self he was going to start a fire. Self saw that Wilcox was holding a blue Bic lighter, and Wilcox said "[T]hree hots and a cot, I don't care" at least twice. Wilcox, who was standing over a small charred patch of vegetation, also said, "but it won't burn." Self was worried about getting involved, so he left.

After talking to Self, Dellamonica interviewed Wilcox and, after talking to him, gave him his contact information. Wilcox gave Dellamonica his cell phone number as well. Shortly after that interview, Dellamonica received a text message from Wilcox's cell phone. Dellamonica responded to this message with the following: "Feel free to have your lawyer contact me, thank you." Later that day, Dellamonica received a text message from Wilcox's cell phone which read: "FUCK YOU, JAKE. I DIDN'T DO IT. IF YOU THINK I DID, WELL, THEN, LET'S TAKE IT TO COURT, AND I HOPE ONE OF MY [REDACTED] FANS SHOOTS YOU IN THE FACE. FUCK YOU, BITCH!" Dellamonica received several more messages from Wilcox's cell phone number, one of which referred to Wilcox's lawyer shooting Dellamonica with an unregistered .357 magnum.

Self testified that after being interviewed by Dellamonica, Wilcox was upset. He saw Wilcox write a text message on his cell phone and, as he typed it, Wilcox read it aloud: "Jake, I will blow your head off with my unregistered .357 magnum." Self told Wilcox not to send the text message, but Wilcox backed away from him and pushed the "send" button, saying "It's been sent."

Dellamonica transferred the text messages he received from Wilcox's phone to his state e-mail, printed them out and attached them to his fire investigation report. He perceived them as threatening.

The defense presented no evidence.

The jury found Wilcox guilty of deterring an executive officer (§ 69), but acquitted him of the charge of attempt to burn (§ 455) and deadlocked on the charge of arson (§ 451, subd. (c)). The arson charge was dismissed after the prosecution declined to retry Wilcox.

On January 26, 2012, Wilcox was sentenced to 270 days in county jail and five years probation, with custody credits of 93 days. The court imposed a \$200 restitution fine, a \$40 court security fee and a \$30 court facilities fee. The court also imposed and stayed a \$200 probation revocation fine.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the whole record and have concluded there is no arguable issue on appeal.

II. DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.