

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

MICHAEL ANTHONY TAROLA,

Defendant and Appellant.

H038395

(Monterey County

Super. Ct. No. SSC120054)

**I. INTRODUCTION**

Defendant Michael Anthony Tarola pleaded guilty to two charges, felony possession of a controlled substance, hydrocodone (Health & Saf. Code, § 11377, subd. (a)), and misdemeanor possession of a switchblade (Pen. Code, § 21510, subd. (b)).<sup>1</sup> The trial court deferred entry of judgment upon the conditions of enrollment in a drug education and rehabilitation program and participation in narcotics or alcoholics anonymous classes. Defendant failed to enroll and subsequently admitted that he had violated the conditions of his release. The trial court later reinstated deferred entry of judgment on the condition that defendant enroll in and complete a drug education and rehabilitation program.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Defendant filed a notice of appeal and we appointed counsel to represent him in this court. Appointed counsel has filed an opening brief that states the case and facts but raises no issue. We notified defendant of his right to submit written argument on his own behalf within 30 days. The 30-day period has elapsed and we have received no response from defendant.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), we have reviewed the entire record. Following the California Supreme Court's direction in *Kelly*, at page 110, we will provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed."

We have also considered the threshold question of appealability on our own motion. (*Olson v. Cory* (1983) 35 Cal.3d 390, 398 (*Olson*)). For the reasons discussed below, we find the challenged order to be nonappealable and therefore we will dismiss the appeal.

## **II. BACKGROUND**

The facts underlying defendant's charges were not included in the record on appeal, and therefore our background summary is limited to the relevant procedural history.

The complaint filed on March 1, 2012, charged defendant with possession of a controlled substance, hydrocodone (Health & Saf. Code, § 11350, subd. (a); count 1); possession of a controlled substance, hydrocodone (Health & Saf. Code, § 11377, subd. (a); count 2); and possession of a switchblade (§ 21510, subd. (b); count 3).

On March 2, 2012, defendant entered a plea of not guilty to all three counts. Thereafter, on March 13, 2012, defendant moved to withdraw his pleas of not guilty and to enter conditional pleas. In exchange for a plea of guilty to counts 2 and 3, defendant was to receive deferred entry of judgment (§ 1000 et seq.).

Before accepting defendant's guilty pleas during the March 13, 2012 proceedings, the trial court determined that defendant had made a knowing, intelligent, and voluntary waiver of his constitutional rights and there was a factual basis for the plea. Additionally, the trial court advised defendant, among other things, that deferred entry of judgment was conditioned upon his participation in a drug education and rehabilitation program, and entry of judgment would be deferred for a minimum of 18 months and a maximum of three years from the date of referral. The court also ordered defendant to show proof at the next hearing that he had attended at least three narcotics or alcoholics anonymous classes per week.

Defendant failed to enroll in a drug education and rehabilitation program and on March 29, 2012, the trial court issued a bench warrant for failure to appear in court with proof of enrollment. The bench warrant was rescinded on April 11, 2012, when defendant appeared while in custody on another matter. On April 25, 2012, defendant appeared in court and admitted that he had violated probation in another matter and had also violated the conditions of his release in this case.

At the sentencing hearing held on May 29, 2012, the trial court reinstated deferred entry of judgment and ordered defendant to enroll in a drug education and rehabilitation program within 30 days of his release from custody in another matter, to provide proof of enrollment, and to complete the program within 18 months.

### **III. APPEAL**

On May 30, 2012, defendant filed a notice of appeal from the May 29, 2012 order deferring entry of judgment.

Although the parties have not addressed the appealability of the May 29, 2012 order deferring entry of judgment, "since the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion." (*Olson, supra*, 35 Cal.3d at p. 398; *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1413.) The California Supreme Court ruled in *People v. Mazurette* (2001) 24 Cal.4th 789 that a defendant

cannot appeal following a deferred entry of judgment, since “there is—as yet— no judgment from which defendant can appeal.” (*Id.* at p. 794.) We will therefore dismiss the appeal as being taken from a nonappealable order.

#### **IV. DISPOSITION**

The appeal is dismissed.

---

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

---

ELIA, ACTING P.J.

---

MÁRQUEZ, J.