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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS CONTRERAS,

Defendant and Appellant.

H042237

(Monterey County

Super. Ct. Nos. SS121025A, SS122013A)

This is an appeal after remand from this court to allow defendant Jesus Contreras to withdraw his plea to one count of transportation of a controlled substance. (Health & Saf. Code § 11379.)<sup>1</sup> Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), defendant asks this court to conduct an independent review of the record following our remittitur.

Back in 2012, in Superior Court case No. SS121025A, among other things, defendant pleaded guilty to one count of transportation of a controlled substance. In a subsequent case, Superior Court case No. SS122013A, he pleaded no contest to possession of marijuana in jail (Pen. Code § 4573.6, subd. (a)).<sup>2</sup>

On November 21, 2012, the court sentenced defendant in case No. SS121025A to seven years and in case No. SS122013A to two years, for a total prison term of nine years. Defendant appealed his convictions.

<sup>1</sup> All further statutory references are to the Health and Safety Code.

<sup>2</sup> We have taken judicial notice of the record in defendant's previous appeal *People v. Contreras* (Oct. 16, 2014, H039231) [nonpub. opn.] (*Contreras I*).

In *Contreras I*, this court reversed defendant's conviction for transportation of a controlled substance (§ 11379) in light of the passage of Assembly Bill No. 721, passed in 2013, which became effective January 1, 2014. (Stats. 2013, ch. 504 § 2.)

In *Contreras I*, this court determined that the intent of the aforementioned legislation was to make transportation of specified controlled substances illegal only if the person had the intent to sell. We noted that subdivision (c) was added to section 11379 to restrict the definition of "transports" to transports for sale.

In *Contreras I* defendant observed that the amendment contained no "saving clause" allowing application of the old law to past acts such as his, which evidently did not involve any intent to sell. (*In re Estrada* (1965) 63 Cal.2d 740, 748 [absent saving clause, an amendment mitigating punishment applies retroactively to nonfinal judgments].) Consequently, he argued, the amendment had to be applied retroactively so that he was afforded the benefit of the "mitigate[d] punishment" that would result. Accordingly, defendant sought reversal of the judgment to enable him to "withdraw from his pleas or seek their modification in light of AB 721." This court agreed and remanded the case to the trial court with directions to allow defendant to withdraw his plea to the transportation count.

On remand, on March 6, 2015, the parties agreed that rather than have defendant withdraw his plea, the prosecutor would amend the felony transportation count (§ 11379, subd. (a)) to a misdemeanor violation of section 11377, subdivision (a)—possession of a controlled substance. The parties stipulated that the misdemeanor possession charge was a lesser included offense of transportation of a controlled substance and that defendant's plea of guilty to the transportation charge would be used as a plea to simple possession.

In case No. SS121025A, the court sentenced defendant to one year in county jail or prison to be served concurrently with the sentence in case No. SS122013A. At the same time, the court resentenced defendant in case No. SS122013A for the conviction of possession of marijuana in jail to the middle term of three years, doubled for defendant's

prior strike conviction. The court awarded defendant 325 days of custody credits. The court re-imposed various fines, fees, and assessments that the court had ordered at defendant's original sentencing hearing. Defendant filed a timely notice of appeal.

We appointed counsel to represent defendant on appeal. Counsel has filed an opening brief that sets forth the facts of the case. Counsel requests that this court review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel has declared that she notified defendant that no issues were being raised by counsel on appeal, and that he could file a supplemental brief with this court.

On September 24, 2015, by letter, we notified defendant of his right to submit written argument on his own behalf within 30 days. That time has passed and we have not received a response from defendant.

Upon our independent review of the record, we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. The fines and fees imposed are supported by the law and the facts. Defendant received a legally authorized sentence that was within the terms of his original plea agreements.<sup>3</sup> Further, the custody credits the court awarded were calculated correctly.

*Disposition*

The judgment is affirmed.

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<sup>3</sup> In *Contreras I*, we agreed with the parties that the conviction in case No. SS122013A was unaffected by the disposition of case No. SS121025A except that the negotiated nine-year sentence imposed for the two cases together could not be exceeded upon remand so that defendant retained the benefit of his bargain.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.