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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MORRIS AL FOSTER,

Defendant and Appellant.

H043101

(Santa Clara County

Super. Ct. No. C1498897)

I. INTRODUCTION

Defendant Morris Al Foster appeals from a final judgment in a criminal action. Appointed counsel filed an opening brief summarizing the case but raising no issues. We notified defendant of his right to submit written argument on his own behalf. Defendant has not done so.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and find no arguable issue on appeal. Following the California Supreme Court's direction in *Kelly*, we provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.) We also correct a clerical error on the trial court's minutes and abstract of judgment.

II. DISCUSSION

A. *WENDE/KELLY REVIEW*

Defendant was charged by information with reckless driving while fleeing a pursuing peace officer, a felony (Veh. Code, § 2800.2, subd. (a); count 1); driving under the combined influence of alcohol and a drug, a misdemeanor (Veh. Code, § 23152, subd. (f); count 2); endangering or injuring the health of a child, a felony (Pen. Code, § 273a, subd (a); count 3); being under the influence of cocaine and methamphetamine, a misdemeanor (Health & Saf. Code, § 11550, subd. (a); count 4); driving with a suspended license, a misdemeanor (Veh. Code, § 14601.1, subd. (a); count 5); resisting, delaying, or obstructing an officer, a misdemeanor (Pen. Code, § 148, subd. (a)(1); count 6); and possession of drug paraphernalia, a misdemeanor (Health & Saf. Code, § 11364.1; count 7). Count 4 included an allegation that defendant had a prior conviction for violating Health & Safety Code section 11550, and count 5 included allegations that twice within five years of the current offense defendant had been convicted of violating Vehicle Code section 14601.1.

The preliminary hearing transcript is not included in the appellate record, and the probation department's waived referral does not contain a factual summary. According to the prosecution's trial brief, on November 26, 2014 Milpitas police responded to a report of a missing child. The reporting party informed police that her five-year-old son was supposed to be with his father (defendant), whom she had seen drive by her apartment in a van without stopping. The reporting party was concerned because defendant's driver's license was suspended, she believed defendant was high on drugs, and she did not see her son in the van. Defendant drove past the apartment again as police were speaking to the reporting party. Officers pursued defendant through a shopping center parking lot, with defendant disregarding their lights, sirens, and stop sticks. When defendant eventually stopped the van, he had four deflated tires, he was smoking from a glass pipe, and the missing five-year-old was crying in the back of the

van. Police found a glass pipe of the type used to smoke methamphetamine and an empty bottle of alcohol in the van. Defendant was determined to be under the influence of methamphetamine, cocaine, and alcohol.

The trial court denied two motions for new appointed counsel under *People v. Marsden* (1970) 2 Cal.3d 118. Later, new counsel appeared for defendant and the public defender was relieved.

Defendant pleaded no contest to counts 1, 2, 3, 4, 6, and 7, and he admitted the prior alleged as to count 4. The plea was entered on the conditions that count 5 be dismissed at sentencing, defendant receive a two-year prison term on count 3, and he receive concurrent terms on the remaining counts. Defendant's attorney stipulated to a factual basis for the plea.

Probation was denied on all counts. Defendant was sentenced to the lower term of two years on count 3, and a concurrent two-year mid-term on count 1. The court imposed a concurrent 365 days county jail sentence on misdemeanor counts 2, 4, 6, and 7. Count 5 was dismissed. Defendant received 748 days presentence credit so that his sentence was deemed served. Defendant was placed on parole for three years.

As to counts 1 and 3, the court imposed a \$300 restitution fund fine (Pen. Code, § 1202.4, subd. (b)), a \$300 suspended parole revocation restitution fine (Pen. Code, § 1202.45), an \$80 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)), a \$60 court facilities assessment (Gov. Code, § 70373), a \$129.75 criminal justice administration fee to the City of Milpitas (Gov. Code, §§ 29550, 29550.1, 29550.2), a \$4 emergency medical air transportation fine (Gov. Code, § 76000.10), and a general restitution order.

As to counts 2, 4, 6, and 7, the court imposed a \$400 general fund fine plus penalty assessments, a \$4 emergency medical air transportation fine (Gov. Code, § 76000.10), a \$50 alcohol abuse education prevention assessment (Veh. Code, § 23645), a \$160 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)), a \$120 court

facilities assessment (Gov. Code, § 70373), a \$50 criminal laboratory analysis fee plus penalty assessments (Health & Saf. Code, § 11372.5), and a \$70 AIDS education fine plus penalty assessments (Health & Saf. Code, § 11550, subd. (d)). Defendant was ordered to complete a first offender alcohol program and to register as a controlled substance offender under Health and Safety Code section 11590.

Defendant received an \$800 credit against his fines and fees for eight days served in excess of his sentence.

Defendant filed a timely notice of appeal and requested a probable cause certificate, listing his claims as “ineffective assistanc [*sic*] of counsel,” “constitutional vaiolation [*sic*],” “double jeopardy,” and “sended [*sic*] to prison[] and a county program.” The request was denied.

B. CLERICAL ERROR

The court’s minutes and abstract of judgment reflect an incorrect \$70 criminal laboratory analysis fee, plus \$217 in related penalty assessments. The correct fee, pronounced by the court and mandated by the Legislature (Health & Saf. Code, § 11372.5), is \$50 plus \$155 in mandatory penalty assessments. The minutes reflect an incorrect total amount due of \$2,192. The correct amount is \$2,102. We deem the clerk’s entries on the court’s minutes and abstract of judgment to be clerical error. (See *People v. Hong* (1998) 64 Cal.App.4th 1071, 1075.) We will direct the trial court to correct the minutes and abstract of judgment to reflect the mandatory \$50 criminal laboratory analysis fee plus \$155 in penalty assessments, and a total due of \$2,102.

III. DISPOSITION

The judgment is modified to reflect imposition of a criminal laboratory analysis fee of \$50 (not \$70) under Health and Safety Code section 11372.5, plus mandatory related penalty assessments totaling \$155 (not \$217). After subtracting the \$800 credit, the total due is \$2,102 (not \$2,192). As modified, the judgment is affirmed.

The superior court clerk is directed to prepare and transmit to the Department of Corrections and Rehabilitation (Division of Adult Parole Operations) a corrected abstract of judgment and minutes reflecting our disposition, including the corrected criminal laboratory analysis fee, the corrected penalty assessments related to that fee, and the corrected total amount due.

Grover, J.

WE CONCUR:

Rushing, P.J.

Premo, J.