

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN LAVELL KENDRICK,

Defendant and Appellant.

B275289

(Los Angeles County
Super. Ct. No. MA057502)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Charles A. Chung, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant John Lavell Kendrick appeals following revocation of probation previously granted upon his plea of no contest to driving under the influence of an alcoholic beverage and/or a drug, with admissions he had suffered three prior drunk driving convictions. (Veh. Code, §§ 23152, subds. (a) & (b), 23550, subd. (a), 23550.5, subd. (a).)¹ The court sentenced appellant to two years in the county jail. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

1. The Underlying Offense and Related Proceedings.

The record reflects as follows. On June 29, 2012, appellant was driving a vehicle and a Los Angeles County sheriff's deputy stopped him for a speeding violation. The deputy contacted appellant and observed indicia that he was under the influence of alcohol. Appellant admitted to the deputy that he had drunk alcohol. He failed a field sobriety test and refused to submit to a breath or blood test. The deputy determined from appellant's driving record that he was driving with a suspended license and had failed to install a required interlock device on his vehicle.

Based on the incident, a magistrate, on October 17, 2012, conducted appellant's preliminary hearing, he was represented by counsel at the hearing, and the magistrate held appellant to answer. An information filed on October 26, 2012, alleged as count 1 that appellant committed a violation of section 23152, subdivision (a), having suffered two convictions for violating section 23152, subdivision (a) in 2010 (case No. 005648) and 2012 (case No. 2AV04854), respectively, and a 2010 conviction for violating section 23152, subdivision (b) (case No. 009226). The information also alleged appellant was driving with a suspended

¹ Unless otherwise indicated, subsequent section references are to the Vehicle Code.

license for a prior drunk driving conviction (§ 14601.2, subd. (a); count 2), and failed to install a required ignition interlock device (§ 23573, subd. (i); count 3).

On December 13, 2012, the court arraigned appellant on the information and, represented by court-appointed counsel, appellant pled not guilty to all counts and denied the prior conviction allegations. On April 8, 2013, the court appointed retained counsel to represent appellant and relieved court-appointed counsel.

On April 25, 2013, appellant, represented by retained counsel and pursuant to negotiations, pled no contest to count 1 and admitted the three prior convictions. The court accepted the plea and admissions, and found appellant guilty. The court placed him on formal felony probation for five years on the conditions that, inter alia, he serve one year in the county jail, and complete a one-year residential alcohol or drug program, an 18-month SB38 alcohol program, and a Mothers Against Drunk Driving (MADD) program. The conditions also included that he abstain from the purchase, possession, or consumption of alcohol or alcoholic beverages, obey all laws, orders of the court, and rules and regulations of the probation department, and pay court fees and cost of probation fees. Appellant accepted the conditions. The People moved to dismiss the remaining counts subject to the continuing validity of the plea, and the court dismissed those counts.²

² Pursuant to the negotiated plea, the court terminated appellant's probation in a separate misdemeanor case.

2. The July 24, 2013 Probation Violation and Related Proceedings.

A probation report filed on September 12, 2013, reflects that on July 24, 2013, appellant submitted to an alcohol test. He tested positive for ethanol. On September 12, 2013, appellant, represented by court-appointed counsel, admitted he had violated probation by the positive test. The court ordered appellant's probation reinstated on various conditions, and continued the matter to November 14, 2013, for a progress hearing to confirm, inter alia, his compliance with his probation condition that he enroll in the previously mentioned one-year program.

3. The Current Probation Violations and Related Proceedings.

A probation report prepared for the November 14, 2013 hearing reflects as follows. On September 26, 2013, appellant submitted to an alcohol test. He tested positive for ethanol. Appellant failed to enroll in the one-year program. His total financial obligation was \$5,454, but he had only paid \$25.

On November 14, 2013, appellant failed to appear at the progress hearing. The court summarily revoked his probation and issued a bench warrant.

Years later, at a March 28, 2016 bench warrant hearing, appellant was in custody and represented by court-appointed counsel. The court ordered the matter continued to April 12, 2016, for probation violation setting.

A probation report filed on April 12, 2016, and which the court read and considered, reflects as follows. Appellant made one \$25 payment towards his court-ordered financial obligation, which included a \$1,928 fine. His total balance, including amounts due for the one-year program, the SB38 program, and the MADD program, was \$6,357. There were various itemized fines, fees, and other amounts due, and the cost of probation

services was \$4,738. Appellant failed to complete the one-year program, failed to obey all orders of the court and all rules and regulations of the probation department, and failed to pay court fees and cost of probation fees.

The report states, “The defendant’s failure to abide by the terms and conditions of probation reflects that he has failed to gain meaningful insight as a result of the court’s efforts to rehabilitate him. He has reported only ten times to the probation office. In addition, he failed to appear for a court proceeding, and [failed to] make monthly payments towards his financial obligation. He also failed to complete 30 days in the probation adult alternative work services . . . program. To his credit, defendant has successfully completed a [90-day] drug/alcohol residential program at Antelope Valley Rehabilitation Center. . . .

“The defendant has no new arrests. However, he has not made enough effort to comply with probation conditions. Given the lack of effort and outright defiance of court orders he is not suitable for reinstatement on probation. The probation officer recommends that probation remain revoked and that sentence be pronounced and imposed. However, if the defendant is reinstated on probation, the probation officer recommends that the defendant be released only to a representative at a drug treatment program approved by the court.”

On April 12, 2016, the court called the matter and gave appellant, who was represented by court-appointed counsel, an indicated sentence of “two years.” The court advised appellant of, and he waived, his constitutional rights. The court asked appellant if he admitted he was in violation of probation, appellant personally addressed the court and began to purport to explain what had happened, but the court interrupted and

indicated he would not punish appellant if he wanted an evidentiary hearing. After appellant and his counsel conversed off the record, the court stated, “Back on the record. [¶] He’s talked to his attorney and he indicates he would like to take the two years.” Appellant admitted he was in violation of probation. Appellant’s counsel joined in the admission.

The court found appellant expressly and knowingly waived his rights, his admission was freely and voluntarily given with an understanding of its nature and consequences, and there was a factual basis for the admission. The court sentenced appellant to county jail for the middle term of two years, imposed various fines and fees, and awarded appellant presentence credit. On June 2, 2016, appellant filed a notice of appeal from the April 12, 2016 judgment.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice sent on December 13, 2016, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GOSWAMI, J. *

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.