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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WENDELL BYRD,

Defendant and Appellant.

B240199

(Los Angeles County
Super. Ct. No. BA393448)

APPEAL from a judgment of the Superior Court of Los Angeles County,
David M. Horwitz, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, and
Richard B. Lennon, Staff Attorney, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Wendell Byrd appeals from the judgment entered following his plea of guilty to the sale or transportation of a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd., (a)). The trial court sentenced Byrd to three years, the term to be served in county jail (Pen. Code, § 1170, subd. (h)(1) & (2)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 1, 2012, a felony complaint was filed in which it was alleged in count 1 that, on or about January 30, 2012, defendant and appellant Byrd sold, transported, and offered to sell a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd. (a)).¹ It was further alleged as to count 1, that Byrd was precluded from a grant of probation pursuant to Penal Code section 1203, subdivision (e)(4) because he previously had suffered convictions for the possession of a controlled substance in violation of Health and Safety Code section 11350 and the possession or purchase for sale of a designated controlled substance in violation of Health and Safety Code section 11351.

After waiving arraignment, the reading of the complaint, and a statement of constitutional rights, Byrd pled not guilty to the offense alleged in count 1 and denied the additional allegations. The prosecutor then informed him that, “with the prior felony conviction and probation violations [he] face[d] a maximum of 9 years 8 months in local custody. [¶] However, [if he pled] open to the court, [he would] be sentenced to the low term of three years. That [would] be served in local custody.” When the prosecutor asked Byrd if that was “[his] understanding” and that was “what [he] wished to do[,]” Byrd responded, “Yes.”

The prosecutor then informed Byrd of the rights he would be required to give up before entering a plea of guilty. The prosecutor stated: “You have a right to a preliminary hearing, a jury trial or court trial. [¶] You have a right to confront and cross-examine the witnesses against you; [¶] the right to subpoena witnesses free of charge and to have them come to court and testify in your behalf and to present a defense; [¶] you

¹ In count 2 it was alleged that, on January 30, 2012, Byrd’s codefendant, Jimmie Anderson, possessed a controlled substance, cocaine base, in violation of Health and Safety Code section 11350, subdivision (a).

have a right to remain silent, known as the right against self-incrimination.” The prosecutor then asked Byrd if he understood and was willing to give up those rights. Byrd responded, “Yes.”

After indicating to Byrd that entry of his plea could be a violation of parole or probation and that, if he were not a citizen, it would have consequences regarding his deportation and re-entry into the United States, the prosecutor asked Byrd if he was “entering into this guilty plea freely and voluntarily.” Byrd again responded, “Yes.”

On February 8, 2012, Byrd pleaded guilty to count 1, the sale or transportation of a controlled substance, then admitted “the prior convictions on the complaint with the understanding [he would] get the offer [the prosecutor had] described.” Defense counsel joined in the plea and waivers and “stipulate[d] to a factual basis for the plea based upon the police reports.”

The trial court accepted the plea and admissions, then sentenced Byrd to the “low term [of] three years [at the] local level.” The court awarded Byrd presentence custody credit for 10 days actually served and 10 days of conduct credit, for a total of 20 days.

Byrd was ordered to pay a \$40 court operations fee (Pen. Code, § 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$50 lab analysis fee (Health & Saf. Code, § 11372.5), a \$240 restitution fine (Pen. Code, § 1202.4, subd. (b)), a suspended \$240 parole revocation restitution fine (Pen. Code, § 1202.45) and an additional \$140 penalty assessment pursuant to the Health and Safety Code.

Byrd filed a timely notice of appeal on March 27, 2012. Byrd also requested a certificate of probable cause on the basis that he failed to receive the appropriate number of presentence custody credits. He appears to be asserting that he was on and off of probation from February 4, 2010, until January 30, 2012, and that he is entitled to presentence credit for time served during that time. The trial court denied the application for the certificate.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed June 21, 2012, the clerk of this court advised Byrd 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. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.