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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVEON TRAVON TOUTAR,

Defendant and Appellant.

B281508

(Los Angeles County
Super. Ct. No. TA136202)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Schultz, Judge. Affirmed.

Jonathan P. Milberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Daveon Travon Toutar appeals from a judgment which sentenced him to state prison after he was found in violation of the terms of his probation. Toutar’s appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

FACTS

On June 18, 2015, a jury convicted Toutar of dissuading a witness (Pen. Code, § 136.1, subd. (b)(2)).¹ Toutar admitted he suffered a prior conviction within the meaning of the Three Strikes law (§§ 667, subds. (b)–(j); 1170.12). The court struck the strike allegation and sentenced Toutar to eight years in prison, comprised of the high term of three years for the base term, and an additional five years for the prior serious felony conviction (§ 667, subd. (a)(1)). Execution of sentence was suspended and Toutar was placed on five years of probation, conditions of which included that he serve 365 days in county jail, complete a six-month anger management program, and “obey all laws, rules, regulations and orders of the court and probation department.”

On May 18, 2016, Toutar pled no contest to the following misdemeanor crimes: (1) possession of a smoking device (Health & Saf. Code, § 11364); (2) possession of burglary tools (§ 466); (3) trespassing (§ 602); and (4) vandalism under \$400 (§ 594). Toutar admitted these convictions put him in violation of probation in this case. The trial court revoked probation, sentenced him to 180 days in the county jail, and reinstated probation on the same terms and conditions. The trial court told Toutar, “I’m telling you this case should have resulted in you

¹ All further statutory references are to the Penal Code unless otherwise stated.

going to state prison. It's up to you. I'm giving you a chance not to do it again. There's not too many more chances."

Thereafter, Toutar was again found in violation of his probation on October 5, 2016, this time after a contested hearing. The evidence demonstrated that Toutar was driving a stolen motorcycle on the freeway which hit a side wall, causing him and his passenger to fall. Toutar left his passenger, got back on the motorcycle, and rode away. He was arrested nearby shortly thereafter and taken to the hospital. The trial court took judicial notice of the fact that Toutar was in custody on the day the motorcycle was stolen and found insufficient evidence that Toutar received stolen property or knew the motorcycle was stolen. However, Toutar was found in violation of probation for leaving the scene of the accident.

The trial court ordered the previously suspended eight-year prison sentence executed, and awarded appropriate presentence credit.

Toutar filed a timely notice of appeal after this court granted his application for relief from default.

DISCUSSION

We appointed counsel to represent Toutar on appeal. Appointed counsel filed an opening brief on appeal pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. We notified Toutar by letter that he could submit any argument or issues that he wished our court to review. Toutar has not responded to our letter.

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled his duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.