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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVON MITCHELL,

Defendant and Appellant.

B245806

(Los Angeles County  
Super. Ct. No. BA397544)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Clifford L. Klein, Judge. Affirmed.

Suzann E. Papagoda, under appointment by the Court of Appeal, for  
Defendant and Appellant.

No appearance for Respondent.

On June 12, 2012, an information was filed charging defendant with unlawfully selling, offering to sell or transporting marijuana in violation of Health and Safety Code section 11360, subdivision (a). It was further alleged that in October 2007 defendant had suffered a prior conviction for violation of that same provision for purposes of Penal Code section 667.5, and that he had suffered three prior felony convictions within the meaning of Penal Code section 1203, subdivision (e)(4).<sup>1</sup>

On June 26, 2012, defendant pled no contest to the charge. The section 667.5, subdivision (b) allegation was dismissed on the People's motion. In accordance with the plea agreement, the court sentenced defendant to the upper term of four years. The sentence was suspended and defendant was placed on formal probation for a period of three years following completion of a one-year residential drug treatment program.

Defendant was enrolled in the First to Serve drug treatment program. On August 20, 2012, the court learned defendant had left the program. Probation was revoked and a bench warrant issued. Defendant was arrested on August 27. At a September 10, 2012 hearing, defendant admitted the violation. He stated he left First to Serve because it was a Christian-based program and he was Muslim. At the hearing, defendant agreed to attend the Los Angeles Transition Center (LATC) drug treatment program. He said he had been there before and believed it would be able to accommodate his religious observances. The court stated: "[I]f it doesn't work, . . . just don't run. Come back here." Defendant agreed to "just come back to court." The court revoked and reinstated probation.

On September 18, 2012, the court received a letter from LATC indicating that defendant was not attending its program. Probation was again revoked and a

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

bench warrant issued. Defendant was arrested. At the hearing on December 11 and 12, Phillip Mark, a representative of LATC testified that participants were expected to attend church services twice weekly or be terminated and that the program was unable to accommodate Muslim dietary restrictions. Defendant testified he had never been admitted into the LATC program because he advised its representatives during the enrollment process that he would be unable to attend church services. The court found that defendant had not complied with the condition that he return to court if LATC were unable to accommodate his religious practices. Probation remained revoked. The four-year sentence was executed and imposed. Defendant was given 472 days credit for time served, 236 actual days and 236 good time/work time days.

Defendant appealed the probation revocation and sentencing order. On May 16, 2013, appointed counsel filed an appellate brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins* (2000) 528 U.S. 259, 264.) On May 17, 2013, we advised defendant he had 30 days within which to submit by brief or letter any contentions or arguments he wished this court to consider. On June 10, 2013, defendant filed a one-page supplemental letter brief stating defense counsel should have called a witness from LATC to confirm that he was not accepted into the program because he would not agree to attend church services. He requested an extension of time to raise additional issues. On July 2, 2013, we granted defendant's request and extended time to file an additional supplemental brief to July 31, 2013. No additional brief was filed.

Defendant's contention that an additional witness from LATC should have been called to testify concerning the reason he did not enroll in the program is not well taken. When the trial court revoked probation and imposed the sentence, it was aware of defendant's contention that he had not enrolled in LATC's program

because it was not compatible with his religion. The court found that defendant had failed to comply with a non-drug-related condition of probation, namely, that if the LATC program did not work out, defendant was to return to court. The record reflects that defendant neither enrolled in the program nor returned to court with an explanation for his failure to do so.

This court has examined the entire record in accordance with *People v. Wende, supra*, 25 Cal.3d at pages 441 to 442, and is satisfied defendant's attorney has fully complied with the responsibilities of counsel, and that no arguable issues exist. Accordingly, we affirm the judgment of conviction.

### **DISPOSITION**

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.