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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.

MARCQUISE SHIRLEY,

Defendant and Appellant.

B282556

(Los Angeles County
Super. Ct. No. BA451302)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Norman J. Shapiro, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Marcquise Shirley pled guilty to one count of first degree robbery and sentenced to the midterm of four years. Defendant appealed. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable issues exist. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At the preliminary hearing, Samuel P.¹ testified to the following facts. At about 10:30 p.m. on the evening of October 25, 2016, Samuel was walking near the corner of 7th and Wall Street in Los Angeles. He withdrew money from an ATM, went to a market, and purchased food, cigarettes, and lottery tickets. Defendant approached from behind, put his arms around Samuel's neck, and put his hand over Samuel's mouth to keep him quiet. Two other men also grabbed Samuel, and together the three men pushed Samuel to the ground. The men began grabbing at Samuel's pants, and in the process of taking Samuel's belongings, they pulled down his pants, tore one pant leg, and tore the pants pocket. The men took Samuel's lottery tickets, cigarettes, and wallet, which contained \$281, his Social Security card, and two debit cards.

Samuel called the police. After police arrived, Samuel got into the patrol car to look for the suspects. They found defendant at the ATM Samuel had used earlier in the evening, less than a block from where he had been attacked. Defendant was arrested.

¹ We refer to the victim by his first name to protect his privacy. (See Cal. Rules of Court, rule 8.90(b)(4).)

The Los Angeles County District Attorney filed an information charging defendant with one count of first degree robbery (Pen. Code, §§ 211,² a felony), and alleged that defendant had served a prior prison term (§ 667.5). The People later dismissed the prior allegation, and defendant pled no contest to the robbery charge. The court sentenced defendant to four years in prison, and awarded one day of custody credit, which is discussed more fully below. Defendant timely appealed.

DISCUSSION

A. *Wende* review

On appeal, defendant's appointed counsel filed a brief requesting that we independently review the record for error. (*Wende, supra*, 25 Cal.3d 436, 441.) We directed counsel to send the record and a copy of the brief to defendant, and notified defendant of his right to respond within 30 days. We have received no response.

We have examined the entire record, and are satisfied no arguable issues exist in the appeal before us. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 110; *Wende, supra*, 25 Cal.3d at p. 443.)

B. Custody credits

Defendant's counsel also filed a motion seeking a correction of defendant's presentence custody credits. The probation report noted that defendant was arrested on October 25, 2016, and he was released on bond on October 29, 2016. At the sentencing hearing, the court asked defense counsel about defendant's credits. According to the reporter's transcript, counsel responded, "No credits, your honor, apparently he bailed out within after

² All further statutory references are to the Penal Code unless otherwise indicated.

three days of in custody it is a 15 percent crime 15 percent of three days is – and it doesn't compute up to any time at all unless you have a different record. This is based upon what [defendant] is telling me.” The next line—which was apparently stated by the court, but is not attributed to the court in the transcript—says, “I will give you one day credit.” The minute order from the hearing and the abstract of judgment note one day of custody credit.

In his motion submitted on appeal, defendant asserts that he should have been given three days of custody credit based on counsel's representation that defendant spent three days in custody before posting a bond. The motion was served on the Attorney General's office, which did not file a response. The probation report suggests that defendant may be entitled to custody credits based on five days of incarceration before sentencing.

Section 1237.1 requires a defendant to seek correction of presentence custody credits in the trial court, rather than on appeal.³ While appellate courts retain some discretion to correct presentence custody credits even when no objection was raised below (see, e.g., *People v. Acosta* (1996) 48 Cal.App.4th 411), the

³ “No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction.” (§ 1237.1.)

record on appeal is insufficient to allow us to determine how many days' credit defendant is entitled to receive. We therefore deny defendant's motion to adjust defendant's custody credits, without prejudice to any future motion defendant may make in the trial court.

DISPOSITION

Defendant's motion to correct presentence credits is denied without prejudice to any future motion requesting such a correction. The judgment is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.