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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.

NELSON AGUILOZ

Defendant and Appellant.

B283790

(Los Angeles County  
Super. Ct. No. PA087010)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Hayden Zacky, Judge. Affirmed.

Summer Shelton, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In this *Wende*<sup>1</sup> appeal, we affirm the judgment revoking probation and imposing sentence on defendant Nelson Aguilo.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 22, 2016, a felony complaint was filed against defendant alleging a single count of possession of heroin in jail. (Pen. Code, § 4573.6, subd. (a).) He entered a plea of no contest and was sentenced pursuant to a settlement agreement on October 18, 2016. The trial court selected the mid-term of three years, which was suspended, and placed defendant on three years of formal felony probation. He was ordered to serve 265 days in county jail, which was reduced to time served based on his 265 days of custody and conduct credits.

As a condition of probation, defendant enrolled in a 180-day residential drug treatment program on April 17, 2017. However, he left the program without permission on May 8, 2017.

At defendant's June 22, 2017 probation violation hearing, the prosecution submitted a probation report showing that defendant had left the residential drug treatment program without authorization. Defendant objected that the report contained inadmissible hearsay, but the objection was overruled under *People v. Gomez* (2010) 181 Cal.App.4th 1028.<sup>2</sup>

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<sup>1</sup> *People v. Wende* (1979) 25 Cal.3d 436.

<sup>2</sup> In *People v. Gomez*, *supra*, 181 Cal.App.4th 1028, a probation officer, Lindsay, prepared a report which stated that the defendant did not report to the probation department as directed, make restitution payments, or submit verification of his employment and attendance at counseling sessions. (*Id.* at p. 1038.) The trial court admitted the report at the revocation hearing over the defendant's hearsay objection. As in this case,

Defendant presented no evidence to contradict the contents of the report. After noting the probation report contained defendant's undisputed admission that he left the drug treatment program in order to see his family, the court found him in violation of probation. The court revoked his probation, imposed a three-year prison sentence, and awarded him 334 days of custody credits.

Defendant filed a timely notice of appeal. On October 10, 2017, his appellate counsel filed a *Wende* brief that raised no issues. Counsel notified defendant of his right to file a supplemental brief, but we have received no communication from him. We have reviewed the record under *People v. Kelly* (2006) 40 Cal.4th 106, and are satisfied that there are no arguable issues. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

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the defense presented no evidence. (*Id.* at p. 1033.) In affirming the evidentiary ruling and revocation order, the appellate court found that Lindsay's presence at the revocation hearing would not have added anything of significance to the truth-finding process. Lindsay would have been testifying to a negative, and his demeanor would not have been a significant factor in evaluating the credibility of his foundational testimony based on the probation department's records regarding the defendant's failure to report, pay restitution, provide verification of employment, and attend counseling. (*Id.* at p. 1038.)

**DISPOSITION**

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.