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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.

JAMES PAK,

Defendant and Appellant.

B242582

(Los Angeles County  
Super. Ct. No. BA391824)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Teri Schwartz, Judge. Affirmed.

Marissa McKinster Magilligan, under appointment by the Court of Appeal, for  
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On December 7, 2011, police arrested appellant James Pak for misdemeanor domestic battery of his girlfriend, a crime seen by at least two witnesses. Six days later on December 13, 2011, appellant grabbed a cell phone from the hand of a fellow bus passenger. When the cell phone's owner tried to recover his phone, appellant threatened the owner with a tire iron.

On December 15, 2011, the People filed a felony complaint against appellant charging him with one count of second degree robbery and two counts of receiving stolen property for possessing the cell phone and its case. In the meantime either before the robbery or shortly thereafter, appellant entered a plea of either guilty or nolo contendere (the record does not indicate which) to misdemeanor domestic battery of his girlfriend and was placed on summary probation. Shortly after entering his plea for domestic battery, appellant on December 28, 2011, entered into a plea bargain of the robbery charge. He pleaded nolo contendere to one count of robbery, following which the court dismissed the receiving stolen property charges and placed appellant on three years' formal probation.

Two months later at 1:00 a.m. on February 21, 2012, police stopped appellant as he was riding a bike. When the officers approached appellant, he dropped a small, cylindrical pipe commonly used to smoke methamphetamine. In searching appellant, the police found a piece of paper containing stolen credit card information. Police took appellant into custody and his probation was summarily revoked.

At appellant's probation revocation hearing on May 1, 2012, the court rejected as untimely appellant's peremptory challenge under Code of Civil Procedure section 170.6. After testimony by police and the owner of the stolen credit card identified on the piece of paper seized from appellant, the court found appellant had violated terms of his probation by possessing the methamphetamine pipe. At the sentencing hearing two weeks later, appellant requested reinstatement to probation and placement in a residential drug treatment program. The court deemed appellant unsuitable for probation given his propensity for violence in his crimes of domestic battery and robbery. The court instead imposed a low-term two-year prison sentence on appellant for robbery, and dismissed the

charges involving the methamphetamine pipe and stolen credit card information. The court also awarded appellant 98 days presentence custody credits and 14 days local conduct credits.

This appeal followed. We appointed appellate counsel to represent appellant. On November 21, 2012, appellant's counsel filed a *Wende* brief stating she could not find any arguable issues for appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We sent a letter to appellant inviting him to file a letter or brief raising any issues he wanted us to consider. On November 29, 2012, appellant filed a letter, the gist of which asks that we cut his sentence in half. His letter states his belief that he would be better off in a drug program, and also refers to a "strike" and suggests the strike stands in the way of reducing his sentence. As to the latter, our independent review of the record finds no indication of a "strike" or that it affected his sentence for robbery, which was the low-term of two years (Pen. Code, § 213, subd. (a)(2)). As to a drug program, although from appellant's letter he has made progress in turning his life around, the trial court's sentence was well within its discretion. Following our independent review of the record, we find no arguable issues for appeal.

### **DISPOSITION**

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.