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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.

DAVID PEREZ FONSECA,

Defendant and Appellant.

B232829

(Los Angeles County
Super. Ct. No. BA348435)

APPEAL from a judgment of the Superior Court of Los Angeles County,
George G. Lomeli, Judge. Affirmed.

Benjamin Owens, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Respondent.

On January 29, 2009, while on probation for a 2008 violation of Health and Safety Code section 11352, subdivision (a) (sale of a controlled substance) in case No. BA337296, defendant David Perez Fonseca pled guilty to another violation of the same code section. The court suspended his sentence and placed him on three years of formal probation in the underlying case.¹ He was ordered not to own, possess or sell any controlled substances or associated paraphernalia without a valid prescription and to stay away from places where users, buyers or sellers of drugs congregate. He was further ordered to stay away from the “Fifth Street Corridor,” described as an area bounded by Fourth and Sixth Streets on the north and south and Broadway and Central Avenue on the west and east.

On July 27, 2009, defendant was observed by police officers on Sixth Street near San Pedro handing a packet of a substance which appeared to be rock cocaine to a man in exchange for currency. He was taken into custody that same day and probation was revoked on July 29. After a revocation hearing on April 12, 2010, probation was continued on the same essential terms and conditions.

On July 15, 2010, defendant was observed by police officers on Sixth Street near San Pedro handing a packet of a substance later tested and determined to contain cocaine to a woman in exchange for currency. Probation was revoked for the second time on August 25, 2010, after appellant was located and arrested. After a revocation hearing on March 4, 2011, at which the officers who had observed defendant on July 15 testified, the court found that defendant had violated the terms of his probation in both the underlying case and in case No. BA337296 by engaging in the conduct described by the officers. The court further found that defendant had violated the terms of his probation in the underlying case by being present at that location. The court sentenced defendant to the high term of five

¹ At the same time, the court revoked and reinstated probation in case No. BA337296.

years for the violation of Health and Safety Code section 11352, subdivision (a) in the underlying case and a consecutive term of one-third the middle term -- one year, four months -- for the violation of Health and Safety Code section section 11352, subdivision (a) in case No. BA337296. The court calculated defendant was entitled to a total of 949 days of presentence custody credit in the underlying case.² Defendant was ordered to pay (1) a restitution fine in the amount of \$200 pursuant to Penal Code Section 1202.4, subdivision (b); (2) a court security assessment fee in the amount of \$20 pursuant to Penal Code section 1465.8, subdivision (a)(1); and (3) fines in the amount of \$50, \$85, and \$35 under Health and Safety Code section 11372.5, Penal Code section 1464, and Government Code section 76000, respectively. In addition, a parole revocation restitution fine in the amount of \$200 was imposed and stayed pursuant to Penal Code section 1202.45.

Defendant appealed the parole revocation and sentencing order. On December 23, 2011, 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 December 27, 2011, 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. No response was received.

Having reviewed the record, we are satisfied that no arguable issues for appeal exist.

² The court calculated defendant was entitled to a total of 609 days of presentence custody credit in case No. BA337296.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.