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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAD TADAO STUKEY,

Defendant and Appellant.

2d Crim No. B279666
(Super. Ct. No. 2011019536)
(Ventura County)

Chad Tadao Stukey appeals from an order revoking mandatory supervision and sentencing him to Ventura County jail for 1,042 days. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, setting forth the facts of the case and requesting that we review the entire record. Counsel raised no issues. Appellant personally filed four handwritten supplemental briefs.¹ After reviewing the entire

¹ We denied appellant's request to file a fifth supplemental brief.

record and appellant's written contentions, we have not found any arguable issue. Accordingly, we affirm.

Procedural Background

In the instant case, appellant pleaded guilty to insurance fraud. (Pen. Code, § 550, subd. (a)(4).) In another case (case no. 2012014356, hereafter no. 356), he pleaded guilty to possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and admitted an out-on-bail enhancement. (Pen. Code, § 12022.1, subd. (b).)²

On July 24, 2013, appellant was simultaneously sentenced in both cases. In case no. 356, he was sentenced to the upper term of three years plus two years for the enhancement. In the instant case, he was sentenced to a consecutive term of one year (one-third the three-year middle term). Thus, the aggregate term for both cases was six years. The trial court ordered that the six-year sentence be served by one year of county jail custody followed by five years of mandatory supervision. (§ 1170, subd. (h)(5)(B).)

After the passage of Proposition 47, in case no. 356 the court recalled the felony sentence for possession of a controlled substance. It resentenced appellant to a misdemeanor, imposed a one-year sentence, and deemed the sentence to have been served. (§ 1170.18.)

In the instant case, in December 2015 the court vacated the original one-year consecutive sentence for insurance fraud and resentenced appellant to the five-year upper term. It ordered that the five-year term run consecutively to the one-year misdemeanor sentence in case no. 356. Thus, the aggregate term

²All further statutory references are to the Penal Code.

for both cases is six years, the same as the original July 2013 aggregate term. The resentencing was lawful. (See *People v. Sellner* (2015) 240 Cal.App.4th 699, 701-702; *People v. Mendoza* (2016) 5 Cal.App.5th 535, 538-539.)

On the same day that he was resentenced to the five-year upper term, appellant admitted a violation of mandatory supervision. The court revoked and reinstated mandatory supervision on condition that appellant serve 180 days in the Ventura County jail.

In March 2016 the court conducted an evidentiary hearing on charged violations of mandatory supervision. The court found that appellant had committed the violations. It revoked mandatory supervision and ordered that appellant “serve the remainder of his sentence [1,042 days] . . . in the Ventura County [J]ail.”

Appellant’s Contentions Lack Merit

Appellant contends that his trial counsel, a deputy public defender, engaged in misconduct. Counsel allegedly “act[ed] as a[n] unsworn, unlicensed, unassigned deputy district attorney prosecution assistant.” Appellant discovered that counsel “was collusively collaborating with the prosecution against me.” Counsel wrongfully requested that appellant be incarcerated “for 278 days, for reasons of ‘Global Positioning.’”

Appellant’s misconduct claim is not supported by the record on appeal. We therefore reject it. (See *People v. Burgener* (2003) 29 Cal.4th 833, 880 [in determining whether counsel provided ineffective assistance, “we are limited to the record on appeal”].)

As to whether he violated mandatory supervision, appellant contends he had “valid grounds” for missing a

probation department appointment on December 18, 2015, because he was in a “car accident.” “We review the trial court's [mandatory supervision] revocation order for an abuse of discretion. [Citations.] The trial court’s factual findings are reviewed for substantial evidence. [Citations.]” (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318.)

At the evidentiary hearing, appellant testified that on December 18, 2015, he had suffered a herniated disk when his vehicle was rear-ended. He was hospitalized and reported his condition to the probation department. When he was released from the hospital later that day, the probation department was closed. But this was not the only probation appointment appellant missed. Tony Machuca, appellant’s probation officer, testified that he had also missed an appointment scheduled for December 29, 2015.

Furthermore, the trial court found not only that appellant had failed to “regularly report to the probation officer,” but also that he had failed (1) “to submit to testing for controlled substances,” (2) “to participate in the substance abuse counseling program,” (3) to obtain the probation officer’s approval before changing his residence, and (4) to pay court-ordered restitution. These four findings are more than sufficient to support the revocation of mandatory supervision.

Appellant appears to contend that, in March 2016 when he was sentenced to 1,042 days in county jail, he was not given credit for all jail time served prior to sentencing. Appellant relies on a “total fixed term calculator” (the calculator) attached to the probation department’s Notice of Charged Violations of Probation. Appellant claims that the calculator shows that “the combined time remaining to complete the required six year fixed

term as of 7-24-2013 was 1042 days.” He asserts that, as of March 30, 2017, he had “1084 days in custody” so he should have been released prior to that date.

Appellant has misinterpreted the calculator. It shows that the “Start Date” of his six-year sentence is July 24, 2013 - the date he was originally sentenced - and that he currently has 1,042 days remaining on that sentence after subtracting his custody credits. The trial court stated: “[T]he probation office has given the Court a summary of the total fixed term calculation, which notes that he has 1,042 days remaining on his sentence. And that is the term that is now imposed.”

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.