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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMIAH ALAN MONSTEIN,

Defendant and Appellant.

B282844

(Los Angeles County
Super. Ct. No. PA088042)

APPEAL from an order after judgment of the Superior Court of Los Angeles County. Cynthia L. Ulfig, Judge. Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Jeremiah Alan Monstein appeals from an April 10, 2017 order revoking probation and imposing a suspended three-year sentence. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY

On February 8, 2017, while being represented by a deputy public defender, appellant entered a plea of guilty to one felony count of possession of metal knuckles in case No. PA088042. (Pen. Code, § 21810.)¹ Pursuant to the plea agreement, at the March 7, 2017 probation and sentencing hearing, the trial court imposed and suspended the upper term of three years to be served in county jail and ordered appellant to complete a minimum 365-day residential treatment program. Along with the other conditions of probation, the court ordered appellant “not to own, use, possess, buy or sell any controlled substances” and not to associate with persons whom appellant knows to be narcotics users or sellers, except when attending a drug-treatment program.

At the same hearing, the court dismissed case No. PA080287, in which appellant had been convicted of misdemeanor possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), and in which appellant had been on probation since 2014. The court also took appellant’s waiver of his rights to formal probation violation hearings on two additional misdemeanor cases, Nos. 6SV04620 and 6SV05393, and appellant stipulated he was in violation of the conditions of

¹ Unless otherwise noted, further statutory references are to the Penal Code.

probation in those cases. On case No. 6SV04620 (Veh. Code, § 14601.1, subd. (a) [driving with suspended/revoked license]), the court ordered probation to remain terminated and imposed a jail sentence of time served. On case No. 6SV05393 (§ 530.5, subd. (c)(1) [identity theft]), the court reinstated probation and modified jail time to 126 days.

On April 10, 2017, the court conducted a contested probation violation hearing in this case, No. PA088042. Paul Dumont, the program director of Community Sober Living, testified that appellant entered the program directly from custody on March 10, 2017. On March 17, 2017, appellant was discovered to be under the influence of methamphetamine. Dumont asked appellant to write a letter, explaining what had happened and what appellant planned to do to change his behavior. Dumont read to the court appellant's letter, in which appellant wrote that he and Kyle Koppos, another person in the program, met outside the facility with someone appellant knew "from the streets." That person gave appellant a cell phone, headphones, and a bag of "crystal" [methamphetamine], and appellant split the methamphetamine with Koppos. Dumont testified that Koppos is an "extremely low functioning mental health client with severe psychiatric issues." Dumont testified that Koppos told him that appellant had given him methamphetamine; Koppos tested positive for that substance.

After speaking with a licensed clinical social worker and others, Dumont decided to terminate appellant from the program. Dumont explained that appellant committed more than one transgression: appellant took drugs, himself, and gave drugs to another program resident.

Appellant testified that he and Koppos were given permission to leave the facility to meet appellant's friend, who gave appellant a cell phone and headphones. The friend, with whom appellant had used drugs in the past, gave appellant a bag of methamphetamine; appellant and Koppos immediately split the bag.

By a preponderance of the evidence, the court found that appellant violated conditions of probation that he not use drugs and that he stay away from known drug users. The court imposed the previously-suspended sentence of three years and ordered him forthwith to state prison.

Appellant timely appealed. After review of the record, appellant's court-appointed appellate counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d 436. By letter dated August 22, 2017, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. Appellant has not filed a supplemental brief.

DISCUSSION

A court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her [probation]" (§ 1203.2, subd. (a).) "[G]reat deference is accorded the trial court's decision, bearing in mind that '[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. [Citations.]' [Citation.]" (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) Proof of a probation violation by a preponderance of the evidence is sufficient to

revoke probation. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 446.) Trial courts have broad discretion to determine whether a defendant has violated probation and whether, as a result, the court should revoke probation. (*Id.* at pp. 443, 445.)

The court acted well within its discretion in revoking appellant's probation where it determined, based on a preponderance of the evidence, that appellant violated the conditions of probation that he refrain from using narcotics and refrain from associating with known drug users.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.