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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH WAYNE LANGSTON,

Defendant and Appellant.

F088929

(Super. Ct. Nos. PCF438549,
PCF438550)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Robert Anthony Fultz, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Plaintiff and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P. J., Snauffer, J. and Guerra, J.[†]

[†] Judge of the Fresno Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

INTRODUCTION

Appellant Joseph Wayne Langston appeals from a postconviction order revoking his probation in two cases on the grounds that he violated its terms. On appeal, appellate counsel filed a brief that summarized the facts with citations to the record, raised no issues, and asked this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Appellant was notified of his right to file a supplemental brief but has not done so. Having reviewed the record and finding no arguable issues, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 20, 2023, the Tulare County District Attorney's Office filed a first amended information in case No. PCF438549 (case 8549), and an information in case No. PCF438550 (case 8550) against appellant. In case 8549, appellant was charged with assault with intent to commit rape (Pen. Code,¹ § 220, subd. (a)(1); count 1), attempted forcible rape (§§ 664; 261, subd. (a)(2); count 2), felony criminal threats (§ 422, subd. (a); count 3), and misdemeanor resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1); count 4). As to counts 1 through 3, the information alleged appellant suffered one prior serious felony (§ 667, subd. (a)(1)), which qualified as a strike (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)), and that appellant committed the offenses while on felony probation.

In case 8550, appellant was charged with assault with a deadly weapon (§ 245, subd. (a)(1); count 1), and misdemeanor resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1); count 2). As to count 1, the information alleged appellant suffered one prior serious felony (§ 667, subd. (a)(1)), which qualified as a strike (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)), and that appellant committed the offenses while on felony probation.

¹

All further undesignated statutory references are to the Penal Code.

On January 25, 2024, appellant entered a plea of no contest in both cases. In case 8549, appellant plead no contest to an amended charge of misdemeanor making lewd threats (§ 647, subd. (a)) and felony making criminal threats (§ 422, subd. (a)), with a stipulated sentence of the upper term of three years for the felony, suspended, and two years' felony probation. In case 8550, appellant plead no contest to an amended charge of felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)) with a stipulated sentence of the midterm of three years, suspended, and two years' felony probation. Appellant was sentenced on May 8, 2024. During sentencing, appellant was directed to report to the probation officer within 72 hours of release from custody, provide required information, and report each month thereafter as directed by the probation officer.

On August 7, 2024, the Tulare County Probation Department filed a verified certificate recommending the revocation of appellant's probation, and a bench warrant was issued for appellant's arrest.

On September 23, 2024, appellant filed a *Marsden*² motion, requesting a new attorney to handle his probation violation case. The motion was denied.

A probation revocation hearing was held on October 10, 2024, for both case 8549 and 8550. The trial court found sufficient evidence of violation of probation in each case. The court found appellant failed to report to probation despite probation officers' attempts to contact appellant at the home where he was ultimately apprehended, and in case 8549, appellant failed to comply with a criminal protective order when he failed to stay at least 100 yards away from the victim and failed to not contact the victim.

The court imposed the previously negotiated sentence in both case 8549 and 8550. In case 8549, the court sentenced appellant to the upper term of three years for count 3, with 861 days' custody credit. In case 8550, the court sentenced appellant to the middle

² *People v. Marsden* (1970) 2 Cal.3d 118.

term of three years, with 861 days' custody credit, to run concurrent to case 8549. In each case, the court advised appellant he may be placed on up to two years' parole, subject to a return to prison for up to one year for a violation of parole, and imposed a \$300 restitution fine, a \$300 probation revocation restitution fine, and a \$300 parole revocation fine which was suspended pending successful completion of parole. Finally, the court ordered appellant to pay a court operations assessment of \$80 and a criminal conviction assessment of \$60 in case 8549, and a court operations assessment of \$40 and a criminal conviction assessment of \$30 in case 8550.

DISCUSSION

“[T]he constitutional right to assistance of counsel entitles an indigent defendant to independent review by the Court of Appeal when counsel is unable to identify any arguable issue on appeal. California’s procedure for securing this right requires counsel to file a brief summarizing the proceedings and the facts with citations to the record, and requires the appellate court to review the entire record to determine whether there is any arguable issue.” (*People v. Kelly* (2006) 40 Cal.4th 106, 119.)

“[A]n arguable issue on appeal consists of two elements. First, the issue must be one which, in counsel’s professional opinion, is meritorious. That is not to say that the contention must necessarily achieve success. Rather, it must have a reasonable potential for success. Second, if successful, the issue must be such that, if resolved favorably to the appellant, the result will either be a reversal or a modification of the judgment.” (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.)

However, “[r]evocation proceedings are ‘constitutionally distinct’ from criminal prosecutions. [Citation.] Parole and probation revocation proceedings ‘in and of themselves, do not concern guilt of any criminal charges, or risk any increase in the maximum terms of confinement to which persons are exposed by virtue of their underlying convictions.’” (*People v. Freeman* (2021) 61 Cal.App.5th 126, 133.) “Furthermore, the United States Supreme Court has held that an indigent defendant has

no per se constitutional right to appointed counsel in parole or probation revocation hearings.” (*Ibid.*) As such, an appeal from a probation revocation proceeding is “is not subject to *Wende* review under the authority summarized above because it is not a direct appeal from a judgment of conviction.” (*Ibid.*)

Nonetheless, this court is not barred from conducting its own independent review of the record. (*People v. Delgadillo* (2022) 14 Cal.5th 216, 232.) This court exercises its discretion to conduct an independent review of the record on appeal and is satisfied no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441–443.)

DISPOSITION

The order revoking probation is affirmed.