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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

D084940

Plaintiff and Respondent,

v.

(Super. Ct. No. INF1700208)

ROBERT GARCIA, JR.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Riverside County, John J. Ryan, Judge. (Retired Judge of Orange Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Christine M. Aros, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2021, a jury convicted Robert Garcia Jr. of second degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)) arising out of drunk driving and one count of driving under the influence of alcohol causing great bodily injury (Veh. Code, § 23153, subd. (e)). The court denied Garcia's request for probation or at

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1 Statutory references are to the Penal Code unless otherwise specified.

least a diagnostic study (§ 1203.03). Garcia was sentenced to prison for a term of 15 years to life on count 1 and a concurrent determinate term of seven years on count 2.

Garcia appealed. This court affirmed the convictions but remanded the case for resentencing. (*People v. Garcia* (Jan. 30, 2023, D080080) [nonpub. opn.].)

On remand, the trial court ordered a diagnostic study for Garcia under section 1203.03. The court thereafter received a report of the study and held a resentencing hearing.

The court sentenced Garcia to an indeterminate term of 15 years to life for second degree murder (count 1) and a concurrent term of six years four months for count 2, driving under the influence of alcohol with great bodily injury.

Garcia filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 indicating counsel has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to independently review the record for error as mandated by *Wende*. We offered Garcia the opportunity to file his own brief on appeal, but he has not responded.

The facts surrounding the offenses in this case were adequately discussed in our earlier appeal, we will not discuss the facts in this opinion. We have, however, granted Garcia's request to take judicial notice of the file in *People v. Garcia, supra*, D080080.

## DISCUSSION

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to independently review the record for error. To assist the court in its review, and in compliance with *Anders v. California* (1967) 386 U.S. 738,

counsel has identified a possible issue that was considered in evaluating the potential merits of this appeal: Whether the court abused its discretion in denying Garcia's request for probation.

We have independently reviewed the record for error as required by *Wende* and *Anders*. We have not discovered any arguable issues for reversal on appeal. Competent counsel has represented Garcia on this appeal.

#### DISPOSITION

The judgment is affirmed.

HUFFMAN, J.\*

WE CONCUR:

KELETY, Acting P. J.

RUBIN, J.

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\* Retired Associate Justice of the Court of Appeal, Fourth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.