

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,]	
]	NO. H025371
Plaintiff and Respondent,]	
]	(MONTEREY CO.
vs.]	SUPERIOR COURT
]	NO. SS020889)
CARL ANTHONY COLLINS,]	
]	
Defendant and Appellant.]	

APPELLANT'S OPENING BRIEF
PURSUANT TO PEOPLE v. WENDE (1979) 25 CAL.3D 436

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
COUNTY OF MONTEREY, STATE OF CALIFORNIA
THE HONORABLE JONATHAN R. PRICE, JUDGE PRESIDING

SIXTH DISTRICT APPELLATE PROGRAM

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_____]	

STATEMENT OF APPEALABILITY

This appeal is taken from a final judgment following imposition of a prison sentence after revocation of a grant of probation. The appeal is cognizable pursuant to California Rules of Court, rule 30(b)(4).

STATEMENT OF THE CASE

On May 6, 2002, appellant was charged in an information filed in the Superior Court for Monterey County. (CT 7-9.) In Count 1, it was alleged that appellant had sold or transported cocaine (Health and Safety Code section 11352). (CT 7.) In Count 2, it was alleged that appellant had possessed cocaine (Health and Safety Code section 11350). (CT 8.) In Count 3, it was

alleged that appellant had unlawfully possessed drug paraphernalia (Health and Safety Code section 11364). (CT 8-9.) Finally, a prison prior enhancement was alleged pursuant to Penal Code section 667.5, subd. (b). (CT 8.)

On August 15, 2002, appellant entered a plea bargain whereby he pled guilty to one count of illegally possessing cocaine (Health and Safety Code section 11350). (CT 15-16.) Appellant was promised that he would be granted probation pursuant to Proposition 36. (CT 15-16.)

On August 22, 2002, appellant was placed on probation. (CT 54.) Appellant was directed to enter a substance abuse treatment program. (CT 55.)

On August 29, 2002, a petition to revoke probation was filed. (CT 58.) The petition alleged that appellant had violated the terms of his probation by suffering an arrest for violations of Penal Code sections 148 and 243. (CT 58.)

On September 13, 2002, a second petition to revoke probation was filed. (CT 63.) The petition alleged that appellant had committed another probation violation by suffering a second arrest for violations of Penal Code section 148 and Health and Safety Code section 11364. (CT 63.)

On October 24, 2002, appellant admitted that he was in violation of the

terms of his probation. (CT 75.) With respect to the September 13, 2002 petition, appellant admitted that he had violated Penal Code section 148 and Health and Safety Code section 11364. (RT 506-508.) As to the August 24, 2002 petition, appellant admitted that he had violated Penal Code section 148 by failing to give truthful information to the police. (RT 506-508.)

On December 12, 2002, appellant was sentenced to two years in state prison. (CT 99.) In declining to reinstate probation, the court held: “He is unamenable. He has a continued history of noncompliance with court orders, and any attempt at rehabilitation has failed.” (RT 1006.)

On December 17, 2002, a notice of appeal was filed. (CT 100.)

STATEMENT OF FACTS

There was no preliminary hearing in this case nor was there a contested probation violation hearing. Thus, the Statement of Facts is taken from the various probation reports submitted to the court.

Facts Relating to The Conviction

On February 15, 2002, the police executed a search warrant at appellant’s residence. (CT 25.) A search of appellant’s shirt pocket revealed .77 grams of cocaine base. (CT 25-26.) At the time of the search, appellant was also carrying a crack pipe. (CT 26.)

The Probation Violation of August 24, 2002

On August 24, 2002, the police were dispatched to 2137 North Fremont Street in the area of Denny's Restaurant. (CT 82.) There, appellant's wife, Johna Collins, advised the police that he had "suddenly slapped her and [taken] all of her money." (CT 82.)

Appellant was located across the street. (CT 82.) He denied knowing his wife. (CT 82.) He also denied that he had been in an altercation with her. (CT 82.) Appellant "insisted he had nothing to do with the incident and indicated that the man involved had gone down the alley behind the NuArt store." (CT 82.)

Probation Violation of September 12, 2002

On September 12, 2002, the police arrested appellant on a no bail warrant. (CT 83.) After appellant was handcuffed, his wife approached the police and demanded that he be released. (CT 83.) As the police officer held onto appellant's arm, appellant leaned forward with the apparent intent to hand something to his wife. (CT 83.) Although appellant was ordered to stop, he did not do so. (CT 83.)

Facts Regarding Appellant's Criminal History

Excluding the present case, appellant has suffered five prior felony convictions starting in 1981. (CT 88-89.) Three of these convictions arose under Health and Safety Code section 11352 and two arose under Health and

Safety Code section 11350. (CT 88.) In 1994, appellant was committed to prison for a four year term. (CT 88.)

Aside from his felony record, appellant has suffered six prior misdemeanor convictions. (CT 89-90.) These offenses included drug related crimes as well as petty theft and trespass. (CT 89-90.)

Appellant's Request for a Reinstatement of Probation and Admission to the Veterans Administration Hospital for Drug Treatment

Appellant readily admitted that he has a drug problem. (CT 84, 94.) Given his status as an honorably discharged veteran, appellant asked the court to allow him to enroll in the Veterans Administration Hospital residential drug treatment program. (CT 85.) In pursuit of his request, appellant presented proof that the Department of Veterans Affairs would admit him to the program. (CT 95.)

Initially, the probation department supported appellant's request. (CT 85.) A subsequent report retracted the support and recommended a prison commitment. (CT 89.) However, at the sentencing hearing, the probation officer again changed position and stated he had "no objection to [appellant] going up to [the] program." (CT 1004.)

Appellant's Letter to the Court

In his December 9, 2002 letter to the court, appellant recounted his work history from his February 1996 release from prison to December 2001. (CT 94.) Although he was incarcerated for six months for a non-drug related parole violation in 1997, appellant maintained his sobriety for the period from March 1997 until his relapse in early 2002. (CT 94.) Given his demonstrated ability to be a productive member of society, appellant asked for the opportunity to be sent to the Veterans Hospital. (CT 94.)

I.

THIS COURT IS REQUIRED TO CONDUCT ITS OWN
INDEPENDENT REVIEW OF THE RECORD.

It is respectfully requested that this court conduct its own independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

II.

FOR THIS COURT'S GUIDANCE, COUNSEL HAS
IDENTIFIED SEVERAL POINTS FOR REVIEW.

1. The trial court abused its discretion by refusing to reinstate probation and commit appellant to the Veterans Administration Hospital residential treatment program. (RT 1006.) Pursuant to Penal Code section 1210.1, subd. (e)(2), the court was authorized to reach this result.

2. The trial court abused its discretion by failing to commit

appellant to CRC. This order was authorized by Welfare and Institutions Code section 3051. (See *People v. McGinnis* (2001) 87 Cal.App.4th 592, 597-598.)

Dated: February __, 2003

Respectfully submitted,

DALLAS SACHER
Attorney for Appellant,
CARL ANTHONY COLLINS

DECLARATION OF DALLAS SACHER

I am an attorney licensed to practice law in the State of California. I am attorney of record for appellant.

I have reviewed the record in this matter. I have consulted with appellant concerning the case and I have also communicated with appellant's trial attorney. I have advised appellant of my intention to file a *Wende* brief. I have also advised appellant that this court will provide him with an opportunity to file his own brief if he so desires.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of February, 2003, at Santa Clara, California.

DALLAS SACHER

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 100 N. Winchester Blvd., Suite 310, Santa Clara, California 95050. On the date shown below, I served the within APPELLANT'S OPENING BRIEF to the following parties hereinafter named by:

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

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I declare under penalty of perjury the foregoing is true and correct. Executed this ____ day of February, 2003, at Santa Clara, California.

Sue Yarbrough