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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO GARIBAY,

Defendant and Appellant.

E079648

(Super.Ct.No. RIF2000539)

OPINION

APPEAL from the Superior Court of Riverside County. Emma C. Smith, Judge.

Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Antonio DeJesus Garibay was charged by felony complaint with committing arson of an inhabited structure. (Pen. Code,¹ § 451, subd. (b), count 1.) The complaint also alleged that he committed the offense during and within a state of emergency proclaimed by the Governor. (§ 454, subd. (a)(2).) Pursuant to a plea agreement, defendant pled guilty to count 1 and admitted the enhancement, and the court placed him on probation for a period of three years. He subsequently admitted violating his probation, and the court terminated his probation and sentenced him to three years in state prison.

Defendant filed a notice of appeal based on the sentence or other matters occurring after the plea. He also filed a request for certificate of probable cause, which the court granted. We affirm.

PROCEDURAL BACKGROUND

On February 11, 2020, the Riverside County District Attorney filed a felony complaint alleging that on or about February 5, 2020, defendant committed arson of an inhabited structure (§ 451, subd. (b)), and that he committed the offense during and within a state of emergency proclaimed by the Governor (§ 454, subd. (a)(2)).

On March 2, 2021, defendant entered a plea agreement and pled guilty to count 1 and admitted the enhancement allegation. Pursuant to the terms of the agreement, the

¹ All further statutory references will be to the Penal Code unless otherwise noted.

court placed him on probation for three years under specified conditions, including that he participate in a mental health treatment program.

On July 7, 2021, the Riverside County Probation Department filed a memorandum alleging that defendant had violated his probation terms. The court revoked defendant's probation and set a hearing.

The court held a hearing on March 8, 2022. Pursuant to a negotiated disposition, defendant admitted violating his probation and signed a form acknowledging and waiving his rights. The court found his admission to be knowing and voluntary.

On July 26, 2022, the court held a hearing and granted defendant's motion to withdraw his admission of the section 454, subdivision (a)(2) enhancement and the People's motion to strike the allegation. The court then terminated his probation and, pursuant to the bargained-for agreement, sentenced defendant to the low term of three years in state prison.

Defendant filed a notice of appeal and a request for certificate of probable cause, alleging that his attorney did not properly advise him and/or he did not understand the potential consequences of admitting his probation violation. The court granted the request.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of

the case and one potential arguable issue: whether defendant knowingly and intelligently admitted violating his probation. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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FIELDS
J.

We concur:

SLOUGH
Acting P. J.

MENETREZ
J.