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**COURT OF APPEAL, FOURTH APPELLATE DISTRICT**

**DIVISION ONE**

**STATE OF CALIFORNIA**

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER ROBERT JACOME,

Defendant and Appellant.

D072457

(Super. Ct. Nos. SCD269691,  
SCS288770, SCS284294)

APPEAL from an order and judgments of the Superior Court of San Diego County, Michael S. Groch, Francis M. Devaney, Gary G. Haehnle, Ana L. Espana, Judges. Affirmed.

Patricia M. Ihara, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This is an appeal of an order revoking probation and judgments in two cases in which appellant Alexander Robert Jacome pled guilty. During the pendency of the cases

involved in this appeal, criminal proceedings were twice suspended due to doubts about Jacome's mental competency. However, after examinations, Jacome was determined to be competent, and criminal proceedings were reinstated. On May 10, 2017, Jacome was sentenced on all three cases.

Jacome's court-appointed appellate attorney filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), which raised no issues and requested that we independently review the record to determine if the trial court committed any error. Jacome filed a supplemental brief arguing he is being unlawfully confined at Atascadero State Hospital, contesting various unspecified conditions of parole, and asking this court to reverse a sex offender registration requirement under Penal Code section 290 in an unrelated case.

We have independently reviewed the record on appeal and considered the briefs filed by Jacome and his appointed appellate counsel. We conclude the appeal raises no reasonably arguable issues and affirm the judgments and order revoking probation.

## I.

### BACKGROUND

We briefly review the relevant factual and procedural background of the cases involved in this appeal.

Case No. SCS284294 (Probation Revocation Order)

On March 3, 2016, Jacome pled guilty to petty theft (Pen. Code, § 487, subd. (c))<sup>1</sup> and resisting a peace officer (§ 148, subd. (a)(1)) in case No. SCS284294. The factual basis for the plea was Jacome "took by theft property belonging to another and willfully delayed an officer in lawful performance of his duties." Jacome waived his appeal rights. Imposition of sentence was suspended, fines were imposed and suspended, and Jacome was placed on probation with terms and conditions, among which was that Jacome violate no laws.

On August 31, 2016, probation was summarily revoked when Jacome was arraigned on a new case, No. SCS288770. In September 2016, prior to the preliminary hearing in case No. SCS288770, the court declared doubt as to Jacome's competency to stand trial. Criminal proceedings were suspended. Approximately two months later, after a mental health examination, Jacome was determined to be competent to stand trial, and criminal proceedings were reinstated.

On December 1, 2016, after the preliminary hearing was held in case No. SCS288770, the trial court formally revoked probation in case No. SCS284294.

In mid-December, the trial court again declared doubt about Jacome's competency, and suspended criminal proceedings until his mental competency was determined. After receiving the reports of mental health examiners, the court found Jacome mentally

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<sup>1</sup> Unless otherwise specified, future statutory references are to the Penal Code.

competent and reinstated criminal proceedings (in case Nos. SCS288770, SCS284294, SCS280742).

In April 2017, based on Jacome's guilty plea in case No. SCS288770, in case No. SCS284294 the court found Jacome had failed to remain law abiding and revoked probation, and set sentencing on both cases for May 10, 2017.

Case No. SCD269691 (Felony Judgment After Guilty Plea)

Jacome was arrested for an incident that occurred July 21, 2016, and charged in an information with assault by means likely to produce great bodily injury (§ 245, subd. (a)(4); count 1), battery upon transportation personnel with injury (§ 243.3; count 2), and with an allegation that he had one prison prior (§ 667.5, subd. (b)). Jacome was arraigned, pled not guilty and denied the allegation.

On April 12, 2017, Jacome entered into a negotiated guilty plea agreement, pleading guilty to count 2 (battery upon transportation personnel with injury), in exchange for a stipulated sentence of two years in prison to run concurrent to any sentence in case No. SCS288770, nunc pro tunc booking to August 26, 2016, and a dismissal of the remaining counts and priors. The factual basis for the plea was Jacome "unlawfully used force against a bus driver during the course of his duties, and it resulted in an injury to him." As a condition of the plea, Jacome waived his right to appeal. Sentencing took place on May 10, 2017.

Case No. SCS288770 (Judgment After Brandishing Guilty Plea)

On August 26, 2016, Jacome was involved in an assaultive incident. He was charged in an information with making criminal threats (§ 422; count 1), resisting an

officer (§ 148, subd. (a)(1); count 2), and exhibiting a deadly weapon other than a firearm (§ 417, subd. (a)(1); count 3), with a personal knife use allegation attached to count 1 (§ 12022, subd. (b)(1)). The information alleged a prior probation denial (§ 1203, subd. (e)(4), and a prison prior (§ 667.5, subd. (b)). Jacome was arraigned, pled not guilty and denied the allegation.

On April 13, 2017, Jacome pled guilty to count 3, exhibiting a deadly weapon other than a firearm. The factual basis for the plea was that he "unlawfully exhibited a knife in a threatening manner." The plea agreement provided the court would deny probation and Jacome's sentence would run concurrent with that imposed in case Nos. SCS284294, SCS280742 and SCD269691. Sentencing took place on May 10, 2017.

Coordinated Sentencing in Case Nos. SCS284294, SCS288770 and SCD269691

Jacome was sentenced on May 10, 2017, in all three cases.

In accordance with his plea agreement, Jacome was sentenced to the mid-term two years in prison in the principal felony case, No. SCD269691 (conviction for battery on transportation personnel). Credits were calculated and awarded from August 26, 2016 (booking date). Jacome was ordered to pay mandatory assessments, a booking fee, and a \$600 restitution fine.

On his misdemeanor brandishing conviction (case SCS288770), Jacome was sentenced to 180 days in jail, with 516 days credit. The court ordered a \$400 fine satisfied by excess custody credits. Jacome was released on this case.

On his petty theft/resisting an officer conviction (case No. SCS284294), Jacome was sentenced to 304 days in jail with 608 days credit. All previously ordered fees and

finances were deleted, with any unpaid restitution to remain due and owing. Probation was terminated, and Jacome was ordered released on this case.

## II.

### DISCUSSION

Appointed appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal and instead requested we independently review the record for error as mandated by *Wende, supra*, 25 Cal.3d at pp. 441-442.

To aid our review, and consistent with *Anders v. California* (1967) 386 U.S. 738, 744, counsel identified one possible appellate issue (*Anders* Issue): Is a defendant's waiver of his right to appeal as part of a plea bargain valid?

Jacome filed a supplemental letter brief raising three issues, which we address below.

First, Jacome asks us to address "the unlawful custody that was not part of the sentencing on 5/10/17." Specifically, according to Jacome, the unlawful custody is "the confinement at Atascadero State Hospital that wasn't a part of sentencing or even suggested or spoken of at previous court adjudication." (*Sic.*) We disagree; Jacome is "confined in" a state prison. In *People v. Watson* (2007) 42 Cal.4th 822, our Supreme Court explained that a person who has been committed to state prison for a term of years but has been transferred to a state hospital under section 2684 (transfer of mentally ill prisoners) is "confined in a state prison" under section 4504, subdivision (a). Under section 2684, the transfer is for an unspecified period within the term of imprisonment

prescribed by the inmate's sentence, and the time spent at the state hospital counts as part of the prisoner's sentence. Thus, the transfer remains in effect only for an indefinite period within the duration of the prison sentence, and is temporary in relation to that sentence. (*Watson*, at pp. 829-830.) Accordingly, Jacome's assertion that he is not confined in a prison as he was sentenced to on May 10, 2017, is without merit.

Second, Jacome asks us to address the "vague and overbroad 'special conditions of parole' that are not relevant to any past or future crime(s) or criminality." (*Sic.*) Jacome says, without argument or explanation, that these special conditions of parole violate a litany of constitutional and statutory provisions, and he complains the conditions were set by the Board of Parole and not the court.

The power to grant parole, including setting parole conditions, is vested in the Board of Prison Terms, not the court; thus, the proper function of the court with respect to parole and parole revocation is simply to ensure the prisoner is accorded due process. (*In re Prather* (2010) 50 Cal.4th 238, 254-255; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 685-686.) In addition, while a parolee may bring a habeas proceeding challenging his parole conditions (§ 1473), such a petition should first be filed in the superior court, not the appellate court. (*In re Roberts* (2005) 36 Cal.4th 575, 593.) Jacome is still "in custody" for the offenses involved in this appeal, and has not pointed us to any conditions of parole established by the Board of Parole which he contends violate his rights. In addition, he has only perfunctorily asserted these unspecified violations without argument in support, and therefore forfeits any appellate claim.

(*People v. Stanley* (1995) 10 Cal.4th 764, 793 [issue deemed forfeited where the defendant failed to support the claim with argument, analysis or citation to the record].)

Finally, Jacome asks us to reverse his section 290 registration requirement. It appears from the record that Jacome may have been obligated to register as a sex offender under section 290 based on a September 2015 incident in which he was charged with sexual battery (§ 243.4, subd. (a)), indecent exposure (§ 314) and vandalism under §400 (§ 594, subd. (b)(2)(A)), and pled guilty to the charge of indecent exposure. (Case No. M205846SC.) The record contains little information about the crime or the registration obligation imposed upon Jacome. However, Jacome's 2015 conviction is long since final, and he may only seek relief from lifetime sex offender registration by way of a petition for writ of mandate in the trial court, once he is released from custody. (See, *People v. Picklesimer* (2010) 48 Cal.4th 330, 335.) His claim is not cognizable in the first instance in this appeal.

We conducted an independent review of the record, including the *Anders* Issue identified by appointed appellate counsel and the points raised in Jacome's supplemental letter brief. Our review did not disclose any reasonably arguable appellate issues. Jacome has been competently represented by counsel in this appeal.



## DISPOSTION

The order revoking probation and judgments are affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

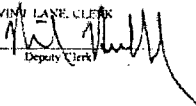
GUERRERO, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth  
Appellate District, State of California, does hereby Certify  
that the preceding is a true and correct copy of the Original  
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WITNESS, my hand and the Seal of this Court.



04/30/2018

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SUPREME COURT  
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Court of Appeal, Fourth Appellate District, Division One - No. D072457 JUL 11 2018

S248950

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**IN THE SUPREME COURT OF CALIFORNIA** Deputy

**En Banc**

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The petition for review is denied.

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**CANTIL-SAKAUYE**  
*Chief Justice*

**Additional material  
from this filing is  
available in the  
Clerk's Office.**