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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JOHN J. ROACH, Defendant and Appellant.	D055340 (Super. Ct. No. SCD212413)

APPEAL from a judgment of the Superior Court of San Diego County, John M. Thompson, Judge. Affirmed.

John J. Roach entered a negotiated guilty plea to assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)); and admitted that he personally used a deadly weapon, a tree branch, in committing the offense (*id.*, § 1192.7, subd. (c)(23)). Under the plea agreement, the prosecution agreed to dismiss a second charge of assault by means likely to produce great bodily injury and various enhancement allegations. The plea bargain called for a stipulated sentence of three years, to run

concurrently with Roach's sentence in San Diego Superior Court case No. SDC207625. All parties agreed that, with application of credits, time would be served at 50 percent, and were there an error in calculation of credits, Roach would have the opportunity to withdraw his plea, unopposed by the People.

Subsequently, Roach filed a *Marsden*[1] motion and moved to withdraw his guilty plea. The trial court appointed another attorney to represent Roach on the motion to withdraw the plea.

At the hearing on the motion to withdraw, Roach informed the court that: (1) he had 590 days credit, more than the 545 needed to only serve 50 percent of his sentence; and (2) he had given police a statement about the commission of a murder he witnessed — and the fact he gave a statement was "all over county jail" and, because of it, he had twice been attacked and wanted protection. The trial court stated Roach's proffered reasons were insufficient to withdraw his plea, but indicated that he was tempted to allow Roach to do so. Roach then informed the court he did not wish to withdraw his plea. The prosecutor put a statement on the record that Roach was offered no promises in exchange for providing police with a statement about the murder, and said that he would work with Roach's attorney to ensure that the defendants in the murder case and Roach were separated, should they be placed in the same prison.

On May 27, 2009, the court sentenced Roach to state prison for three years, with 590 days of presentencing credits.

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

Roach did not obtain a certificate of probable cause.

FACTS

On March 9, 2008, Roach was shooting pool and drinking beer at a bar on Morena Boulevard. The owner of the bar, Mr. Lalama, asked Roach and his friends to finish their game and beer, as a cover was going to be charged shortly. Roach became angry, threw a pitcher of beer on the pool table, grabbed his pool cue and slammed it to the ground. Roach was told to immediately leave the bar, and did so. Lalama was checking identifications at the door when Roach approached and took at swing at him. An altercation occurred between the two; Roach bit Lalama twice on the arm. Lalama called 911. Roach then left, but returned to the bar three hours later. Roach swung a stick at Lalama, hitting the side of his head and arm. Roach was subsequently restrained by security.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as a possible, but not arguable, issue whether Roach was given the benefit of the bargain in being sentenced to three years, and if not, did he waive his right to appeal the sentence?

We granted Roach permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436, and *Anders v. California*, *supra*, 386 U.S. 738, including the possible issue referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Roach has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P.J.

AARON, J.