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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR CORONA,

Defendant and Appellant.

A133844

(Del Norte County
Super. Ct. No. CRPB11-5091)

Defendant appeals from a judgment convicting him of one count of unlawful possession of a sharp instrument while in state prison and sentencing him to 25 years to life in prison. Defendant's appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requests that we conduct an independent review of the record. Defendant was informed of his right to file a supplemental brief and did not file such a brief. (See *People v. Kelly* (2006) 40 Cal.4th 106, 124.) We have conducted the review requested by appellate counsel and, finding no arguable issues, affirm the judgment.

Background

On July 19, 2011, defendant was charged by information with one count of felony possession of a sharp instrument in violation of Penal Code section 4502, subdivision (a) and one count of misdemeanor possession of a handcuff key in violation of Penal Code section 4575, subdivision (d). The information further alleged that defendant had suffered four prior strikes within the meaning of Penal Code sections 1170.12 and 667, subdivisions (b)-(i). Prior to trial, appellant admitted the truth of the prior conviction allegations, and the prosecution dismissed count two.

The remaining count was tried before a jury. Pursuant to a motion by the prosecutor, the court ordered defendant restrained during trial with accommodations for defendant's writing hand. The trial court subsequently instructed the jury pursuant to CALCRIM No. 204 that the restraints were not evidence.

The following evidence was presented at trial: At the time of the incident, defendant was an inmate serving a 196-year sentence at Pelican Bay State Prison. On February 16, 2011, officers conducted a search of defendant's cell. As the officers approached the cell, defendant and his cellmate looked nervous. Defendant grabbed something off the top of his assigned bunk. When told to drop what he was holding, defendant turned around and dropped it in the toilet. Defendant tried to flush the toilet but was not able to do so because the water had been turned off as was sometimes done before cell searches. Unable to dispose of the item, defendant and his cellmate submitted to restraints and were removed from the cell. Officers recovered a four-inch stabbing weapon from the toilet. Testimony was received that at a prior administrative hearing defendant admitted that the weapon was his. In his defense, defendant offered evidence that both he and his cellmate were members of the same gang and that on occasion gang members serving life-sentences will admit to a crime committed by a fellow gang member who is not already serving a life sentence.

The jury found defendant guilty as charged. The trial court denied defendant's *Romero*¹ motion and sentenced him to 25 years to life. Because defendant's offense occurred in prison while he was incarcerated for another crime, he received no presentence credit against this sentence.

Defendant timely filed his notice of appeal.

Discussion

Based on our independent review of the record, we conclude there is substantial evidence in the record to support defendant's conviction. Testimony regarding defendant's significant disciplinary history while at Pelican Bay and his admitted gang

¹ See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

affiliation support the court’s order requiring defendant to be restrained during trial. (See *People v. Hernandez* (2011) 51 Cal.4th 733, 742 [use of physical restraints before the jury “is considered inherently prejudicial and must be justified by a particularized showing of manifest need”].) Because the evidence necessarily disclosed that defendant was an inmate at Pelican Bay, there was little likelihood of prejudice resulting from the jury’s observation that defendant was placed in restraints, and we presume that the jury followed the instruction to disregard those restraints. The trial court did not abuse its discretion in denying defendant’s *Romero* motion. Defendant was represented by counsel throughout the proceedings and we find no indication in the record of ineffective assistance of counsel. We therefore affirm the judgment below.

Disposition

The judgment is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.