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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHANNING SHALAKO BOURNE,

Defendant and Appellant.

A133986

(Solano County
Super. Ct. No. FCR256928)

Channing Shalako Bourne appeals from his conviction on one count of felonious assault (Pen. Code,¹ § 245, subd. (a)(1)), following his plea of no contest. After Bourne filed a timely notice of appeal, appellate counsel was appointed to represent him.

Appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) (see *Anders v. California* (1967) 386 U.S. 738 (*Anders*)), in which he raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124 (*Kelly*)). Counsel attests that Bourne was advised of his right to file a supplemental brief, but he has not exercised that right.

We have examined the entire record in accordance with *Wende*. We agree with counsel that no arguable issue exists on appeal and affirm.

¹ Unless otherwise indicated, all subsequent code references are to the Penal Code.

BACKGROUND

I. Factual Background

The facts stated below are taken from the testimony of Deborah D. at a preliminary hearing on October 15, 2008.

Bourne and Deborah were dating when, on July 5, 2008, they went to a bar. Deborah's daughter, who worked at the bar, drove Bourne and Deborah home. Deborah and Bourne argued about \$20 that Deborah had given Bourne to hire a cab. While Bourne was taking a shower, Deborah hid his laptop to force Bourne to return the money. Bourne asked Deborah where his computer was and then grabbed her by the hair and punched her in the face. As a result, three of Deborah's teeth were pushed up into her palate and she suffered extensive bleeding. Bourne pulled Deborah into the bathroom where he repeatedly struck her on the back of the head, threatening to kill her. When neighbors came to help, Bourne threatened them. Bourne continued to assault Deborah until she passed out. Deborah regained consciousness in the arms of a police officer. At the hospital, doctors pulled Deborah's teeth back into place and anchored them with a metal bar.

II. Procedural Background

On October 17, 2008, following a preliminary hearing, a felony information was filed charging Bourne with assault (§ 245, subd. (a)(1)) (count 1); battery (§ 243, subd. (d)) (count 2); and false imprisonment (§ 236) (count 3).

On May 19, 2009, Bourne entered into a negotiated plea and sentence bargain with the People, pleading no contest to count 1, while counts 2 and 3 were dismissed. A probation report was ordered and sentencing was scheduled.

On July 28, 2009, the court held a hearing on a *Marsden* motion by Bourne, following which it denied the motion. Bourne then completed a *Faretta* waiver form and the court questioned him regarding his *Faretta* rights. The court relieved the public defender but had doubts as to Bourne's competency to represent himself. The court ordered a competency evaluation and reappointed the public defender to represent

Bourne for that evaluation. During proceedings, Bourne said that he wanted to withdraw his plea.

On September 2, 2009, the court summarized the competency reports as opining that Bourne was competent to stand trial but not competent to represent himself. The court reappointed the public defender as Bourne's counsel. A second *Marsden* hearing was then held and the court again denied Bourne's *Marsden* motion. The public defender asked the court for time to determine if there were grounds for withdrawing Bourne's plea.

On September 30, 2009, the public defender informed the court that Bourne still wished to withdraw his plea, but that he would not be filing a motion to do so. The court observed that the public defender was not required to file a baseless motion and stated: "The court in this case does not feel it's appropriate to appoint additional counsel for that reason since there appears to be no basis to withdraw the plea." The court proceeded to sentencing and placed Bourne on probation, conditioned on 180 days in custody. Additionally, the court ordered restitution in the amount of \$7,103, and various fines and fees.

On July 12, 2011, a parole violation hearing was held because Bourne had admitted to his probation officer that he had not abstained from using alcohol. The court sustained the violation and ordered a supplemental probation report.

On August 25, 2011, the court imposed and suspended a three-year prison term and reinstated probation conditioned on a term of one-year in jail. Following the hearing, however, Bourne refused to sign the probation order.

On September 13, 2011, the court again suspended proceedings and ordered competency reports pursuant to section 1368.

On October 20, 2011, the court found Bourne competent to stand trial, based on the submitted reports, and reinstated criminal proceedings.

On October 27, 2011, the court conducted a third *Marsden* hearing and denied Bourne's *Marsden* motion. Based on Bourne's agreement to sign the probation order, the

court reinstated its sentence of August 25 and decreased the restitution that had been ordered by \$568.50.

Bourne filed a timely notice of appeal.

DISCUSSION

Bourne’s appellate counsel represents that the opening brief is filed in accordance with *Wende*. The *Wende* court held: “We conclude that *Anders* requires the court to conduct a review of the entire record whenever appointed counsel submits a brief which raises no specific issues or describes the appeal as frivolous.” (*Wende, supra*, 25 Cal.3d at p. 441.)

In this case, while purporting to file a *Wende* brief, counsel has listed a number of legal issues, with citations to cases but no supporting argument. These issues include: (1) whether Bourne was advised of the consequences of pleading no contest and of his constitutional rights, and whether he waived those rights before pleading no contest; (2) whether the record demonstrates ineffective assistance of counsel; and (3) whether the court erred in conducting a hearing on whether the public defender should be ordered replaced by new counsel when Bourne stated that he wished to withdraw his plea.

When specific issues are raised by the appellant himself in a *Wende* proceeding, by filing supplemental contentions, we must expressly address them in our opinion and explain why they fail. (*Kelly, supra*, 40 Cal.4th at p. 120.) Here, the issues included in the opening brief were presented by appellate counsel, not the appellant, and *Kelly* does not apply.

That counsel filed the opening brief under *Wende* demonstrates that he does not believe the issues he listed are arguable. If he believed them to be arguable, he could not rely on the *Wende* procedure and would be obligated to file a brief that included written argument on those issues. (Cal. Rules of Court, rule 8.204, subd. (a)(1)(B).)

Nevertheless, we *have* considered the issues listed by counsel and agree with counsel that they are not arguable and fail on the merits: (1) Bourne signed and initialed the waiver of rights form and affirmed that he had discussed the contents with his lawyer. Nothing in the record indicates a deficiency in how Bourne was advised of his rights or provides

grounds for asserting that he did not waive those rights. (2) We find nothing in the record that demonstrates ineffective assistance of counsel. (3) Because there were no legal grounds for Bourne to withdraw his plea when he stated a wish to do so, the trial court did not err by failing to hold a hearing to determine if additional counsel should be appointed to file a baseless motion.

We have also reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no arguable issues on appeal. There are no legal issues that require further briefing.

DISPOSITION

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Haerle, J.