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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.

WARREN G. HALEY,

Defendant and Appellant.

A134865

(Sonoma County Super. Ct.
Nos. SCR569996, SCR569692)

Warren G. Haley (appellant) appeals after the trial court revoked his probation and sentenced him to six years in state prison. Appellant's 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. Appellant was informed of his right to file a supplemental brief and did not do so. Having independently reviewed the record, we conclude there are no issues that require further briefing, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On September 17, 2009, a complaint was filed in case SCR569692, charging appellant with: (1) stalking (Pen. Code, § 646.9, subd. (b)¹, count 1); (2) malicious interference with a power line (§ 591, count 2); (3) malicious interference with a telephone line (§ 591, count 3); and (4) misdemeanor violation of a criminal protective order for domestic violence prevention (§ 273.6, subd. (a), count 4). The complaint further alleged one prison prior (§ 667.5, subd. (b)).

¹ All further statutory references are to the Penal Code unless otherwise stated.

The complaint was based on an incident that occurred on September 14, 2009. That night, deputies from the Sonoma County Sheriff's Department responded to the home of appellant's wife (the victim) regarding a restraining order violation. The victim stated that at approximately 9:00 p.m. that evening, she noticed her bedroom window was open and the window blinds were halfway drawn up, which was not how she had left them. As she approached the window to close it, someone suddenly reached inside and grabbed her arm. She looked outside and saw that it was appellant, who was standing in her backyard. She yelled at appellant to "let her go," but he continued to hold her against her will. Using her free arm, she grabbed a coffee cup and threw it at appellant, at which time he released her. Appellant then fled on foot. The victim's mother verified that she saw appellant standing outside the bedroom window. A records check confirmed appellant was the restrained party in a served protective order that prohibited him from having any contact with the victim from June 16, 2009, until June 16, 2012. Deputies also verified that appellant was on an active grant of state parole.

The victim told police that one week before this incident, she noticed her backyard motion sensor light was not functioning. The electrical cord had been severed and there was a pair of wire cutters near the backyard fence. She suspected appellant was responsible for cutting the cord. While being interviewed by police, the victim received two voicemail messages from appellant in which he asked what she was doing. She continued to receive calls from appellant that night. Deputies responded to appellant's residence and knocked on the front door several times and attempted to call the house telephone numerous times, but were unable to reach him.

The following day, deputies spoke to the victim, who explained that appellant would hide inside his house from law enforcement and that his mother, who lived with him, would help hide him. She also mentioned that around the time her backyard motion sensor light stopped working, her bedroom telephone line also stopped working. A representative from the telephone company determined her telephone line had been severed.

On September 25, 2009, a second complaint was filed in case SCR569996, charging appellant with inflicting corporal injury on a spouse (§ 273.5, subd. (a), count 1); (2) assault by means likely to cause great bodily injury (§ 245, subd. (a)(1), count 2); and (3) misdemeanor violation of a criminal protective and stay away order issued pursuant to section 136.2 (§ 166, subd. (c)(1), count 3). The complaint alleged the same prison prior (§ 667.5, subd. (b)) that was alleged in case SCR569692.

The second complaint was based on an incident that occurred on September 23, 2009. That day, at approximately 2:00 p.m., officers were dispatched to a residence to investigate a reported domestic dispute. The same victim, appellant's wife, was sitting on the sidewalk, crying. She stated that Jeffrey M., a mutual friend of hers and appellant's, had asked her to come to his residence. When she arrived, appellant was there and she and appellant became involved in an altercation. Appellant grabbed her and forcibly pushed her down on a couch, causing her cheek to strike the couch's wooden armrest. He then wrapped his hand around her neck and squeezed it, causing her to be unable to breathe for a few seconds. She struggled and was able to break free but appellant placed his arm around her neck from behind and strangled her. He continuously screamed at her to "shut up," and when she was able to break free, he wrapped his hand around her neck a second time and squeezed it to the point that she was unable to breathe for several seconds. At that point, Jeffrey M. told appellant that police were responding, and appellant released her. The victim ran out of the house and down the street, and appellant fled on foot. Officers observed swelling to the victim's cheek, numerous scratch marks on her neck, arm, shoulder and wrist, and bruising on her arm.

During a police interview, Jeffrey M. said he called police after he witnessed appellant angrily "punch[], kick[], and body slam[]" the victim against the couch, "chok[e]" her, and "toss[] her around like a rag doll." He said that on the night before this incident, he drove appellant around for "several hours" looking for the victim. He believed appellant had a firearm with him, as he heard a "metal spinning noise," and Jeffrey M. therefore complied, as he felt appellant would become angry if he did not do as directed. They ultimately returned to Jeffrey M.'s residence and spent the night there.

The following day, he called the victim at appellant's request and told her to come to the residence.

Officers verified that appellant was the subject of an outstanding warrant for charges in SCR569692 and an alleged parole violation. At approximately 6:25 p.m., officers received information that appellant had returned to Jeffrey M.'s residence. As officers approached the residence, they saw appellant hiding near the inside corner of the front yard fence. Appellant complied when ordered to "lay down on his stomach, and was placed under arrest."

On December 23, 2009, appellant pleaded no contest to stalking in case SCR569692 and to inflicting corporal injury on a spouse in case SCR569996. He admitted the same prison prior that was alleged in both complaints. In exchange for his pleas, defense counsel represented that the court had indicated appellant would receive a six-year suspended prison sentence, presentence custody credit for the time spent in jail, and no credits while he participated in the Jericho Project. Counsel also noted that the two trailing misdemeanor charges would be dismissed. The court added that appellant was to have no contact with the victim. On January 25, 2010, appellant was sentenced to state prison for six years with execution of that sentence suspended. He was placed on four years of formal probation and required to serve one year in jail.

At a hearing on December 13, 2010, probation was modified to require appellant to successfully complete the Turning Point treatment program rather than the Jericho Project. All other terms of probation were to remain in full force and effect and appellant agreed to continue waiving any credits while he was in a treatment program. The court ordered appellant to report to probation within two working days of the completion of the Turning Point program. At a hearing on December 5, 2011, appellant admitted he had not remained in contact with probation. Based on that admission, the court found appellant was in violation of probation.

At sentencing on January 6, 2012, the court noted that appellant had stated at the original sentence hearing on January 25, 2010, " 'I know this is absolutely my final opportunity.' " The court noted that appellant nevertheless absconded from probation

and tested positive for methamphetamine after completing the Turning Point program. The court found appellant's claim he made to the court and probation that he did not know he was on probation to be disingenuous. The court stated it was not willing to give him "yet another last and absolutely final opportunity." The court terminated appellant's probation in both cases and imposed the six year prison term that had been previously imposed with execution suspended. The court awarded appellant 971 days of credits.

DISCUSSION

We have reviewed the entire record and conclude there are no arguable issues that warrant further briefing. Substantial evidence supports the trial court's decision to revoke defendant's probation. Appellant was adequately represented by counsel throughout the proceedings. There was no sentencing error. There are no issues that require further briefing.

DISPOSITION

The judgment is affirmed.

McGuinness, P.J.

We concur:

Siggins, J.

Jenkins, J.