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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.

JASON ANGLERO-WYRICK,

Defendant and Appellant.

A135805

(Sonoma County Super. Ct. Nos.
SCR-599525, SCR-605460,
SCR-612010)

I. INTRODUCTION

In January 2012, appellant, age 27 at the time, was charged in two separate informations filed in Sonoma County Superior Court with multiple felonies and enhancement allegations. In a third action filed the same month, he was charged with one additional felony. Although he originally pled not guilty to all those charges, on February 17, 2012, he pled no contest to one count in the two multiple-count informations and admitted one enhancement in both of those cases. The same day, he also pled no contest to the single charge in the third case. In court, appellant verbally admitted, pursuant to Penal Code section 25850, subdivision (c)(3),¹ that he was an active participant in a criminal street gang (the Norteño gang). After receiving appellant's Statement in Mitigation and letters in his support, and also a probation report

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

recommending denial of probation and a sentence to an aggregate term of 12 years and 4 months, the trial court denied probation and sentenced appellant to such a term.

Appellant filed a timely notice of appeal from the sentence imposed (see § 1237.5 and Cal. Rules of Court, rule 8.304(b)(4)) and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, a brief asking this court to consider whether the record before us discloses any issue requiring further briefing. We have carefully examined the record, including especially the filings with the court regarding whether appellant should be granted probation and the sentence to be imposed. We find no issues deserving of further briefing and hence affirm the judgment, including the sentence imposed.

II. FACTUAL AND PROCEDURAL BACKGROUND

We will deal with the factual and procedural background of the three informations filed against appellant in the order of their numbers in superior court.

A. Case No. 599525.

On March 4, 2011, a deputy sheriff on patrol initiated a traffic stop of a Ford Mustang being driven by appellant on Old Redwood Highway near Windsor River Road in Sonoma County. The Ford slowed to a stop but, after the deputy left his car to approach the Ford, appellant took off, and drove off at a very high speed, sometimes approaching 100 miles an hour. After considerable pursuit, during which the Ford went through several red lights and crossed several double lines so as to pass vehicles headed in the same direction, the police were able to stop the vehicle. However, once that occurred, appellant fled and the police were unable to apprehend him. They did, however, apprehend one of the three passengers of the Ford, and found several items in the car, including “Sonoma County Superior Court paperwork” bearing appellant’s name. They also determined that the car was registered to his mother, Diane Anglero. On April 27, 2011, appellant was arrested on the outstanding warrant issued in this case.

On January 18, 2012, the Sonoma County District Attorney filed an information in this case charging appellant with one felony count of driving a vehicle with wanton disregard for safety while evading a police officer. (Veh. Code, § 2800.2, subd. (a).)

Appellant pled not guilty on the same day. On February 17, 2012, appellant changed his plea to no contest, and the matter was left open for sentencing.

B. *Case No. 605460.*

On July 10, 2011, appellant got into a brief argument with a man, Javier Garcia-Dijar who, along with his girlfriend, was on a small beach on the Russian River. That dispute led to appellant slashing Garcia-Dijar's face with what appeared to be a broken glass bottle. The latter was subsequently treated for several deep lacerations to his head, face, and chest. That treatment required 25 stitches.

The victim's family members told investigating deputies that they had heard the assailant shouting "VSRN" as he left the scene. The deputies understood this to be a reference to a subset of the Norteño street gang, Varrio Santa Rosa Norte. A deputy trained in gang matters opined at a preliminary hearing that the assault on Garcia-Dijar benefitted and promoted the Norteño gang.

On January 18, 2012, the Sonoma County District Attorney filed an information in this case charging appellant with two felony counts. The first count alleged that he had committed assault with a deadly weapon (§ 245, subd. (a)(1)), with enhancement allegations charging personal infliction of great bodily injury, commission of the offense for the benefit of a criminal street gang, and commission of the offense while on bail. (§§ 12022.7, subd. (a); 186.22, subd. (b)(1)(C); 12022.1.) On the same day, appellant pled not guilty and denied all the special allegations.

On February 17, 2012, appellant pled no contest to the first count charged and admitted the criminal street gang enhancement. Per a waiver form executed by him, his attorney, and the deputy district attorney, the second count and the other two enhancements were dismissed. The same form stated that appellant's total prison-time exposure regarding all three cases would be 12 years and 4 months in prison.

In oral proceedings the same day, appellant entered a plea consistent with that form; again, the plea was open as to sentencing.

C. Case No. 612010.

On the evening of January 24, 2012, a Santa Rosa police officer noticed a vehicle with an inoperable rear license plate light leaving a parking lot in that city. After the vehicle entered another parking lot and parked, appellant exited it and officers approached him and the car and, as they did so, detected the odor of marijuana . Appellant was wearing several red items of clothing, and had a red cell phone wrapped in a red bandana in the center console of the car.

The officers looked into the car and saw “a shotgun with a pistol grip leaning against the rear passenger seat, with the barrel resting on the floorboard.” The weapon was loaded. When he was being questioned by the police at the police station, appellant told them that he had begun associating with the Norteño street gang after being committed to the CYA at age 16, but that he associated with them only “while in custody” and not while “ ‘on the streets.’ ”

On January 26, 2012, the district attorney’s office filed a felony complaint charging appellant with three counts. The first count charged him with carrying a loaded firearm on the person or in a vehicle (§ 25850, subd. (a)); the second charged him with carrying a loaded handgun not registered to him on the person or in a vehicle (§ 25850, subd. (a)); the third charged him with active participation in a street gang (§ 186.22, subd. (a)). All three counts included three enhancements for commission of the charged offense while on bail in other cases, and the first count also alleged an enhancement for being an active participant in a criminal street gang (§ 25850, subd. (c)(3)).

On the same day, January 26, 2012, appellant entered a plea of not guilty and denied the special allegations.

On February 17, 2012, appellant, his attorney and the prosecutor executed another waiver form by which appellant pled no contest to the first count and admitted the section 12022.1 enhancement. The remaining charges and enhancements were dismissed; the form also noted that the maximum total prison time “for all cases” was 12 years and 4 months in prison. In court that same day, appellant entered a plea consistent with the

waiver form and admitted, pursuant to section 25850, subdivision (c)(3), that he was “an active participant in a criminal street gang.”

D. Further Proceedings in These Cases.

During February and March 2012, the court received a number of letters from friends and relatives asking the court to be considerate of appellant in its sentencing decision.

On March 29, 2012, the probation department submitted a “Felony Presentencing Report” in all three cases. It recommended denial of probation and that appellant be sentenced to an aggregate term of 12 years and 4 months in prison. Some of the points made in this report will be noted hereafter.

On April 19, 2012, appellant submitted a Statement in Mitigation, to which more supportive letters were attached. In it, his counsel asked the court to grant him probation or a suspended prison term subject to his serving two years in “Delancy [sic] Street’s intensive and lengthy behavior modification therapy.”

The probation department’s report was formally filed with the court on May 4, 2012. On the same day, the trial court sentenced appellant to the term recommended in the report, 12 years and 4 months in state prison. In case No. 605460, the court imposed the aggravated term of four years in prison for assault with a deadly weapon, with an additional five years for the gang benefit enhancement. In case No. 599525, it imposed a consecutive term of eight months (one-third of the midterm) for driving with wanton disregard for safety while evading a peace officer, and in case No. 612010, the court imposed another consecutive term of eight months (again, one-third of the midterm) for carrying a loaded firearm on person or in a vehicle plus a two-year enhancement for the out-on-bail enhancement charged and admitted by appellant.

On June 20, 2012, appellant filed a timely notice of appeal, specifically noting that the appeal was based on the sentence being imposed or other post-plea matters not affecting the validity of the plea.

III. DISCUSSION

A trial court's determination of whether or not to grant probation and, if not, the sentence to be imposed, is subject to review by an appellate court under the abuse of discretion standard of review. (See, e.g., 6 Witkin, Cal. Criminal Law (4th ed. 2012) Criminal Judgment, §§ 163-164, pp. 205-207.) Especially in view of this appellant's substantial criminal record, including in particular the circumstances of the three offenses involved here and even, as noted by the trial court, his behavior after the entry of his plea, there clearly was no abuse of discretion in the trial court's decision regarding the denial of probation and the sentence to be imposed.

First of all, appellant had a substantial history of juvenile offenses (six in all), including within them running "from placement," escaping "from Probation Camp," and violations of parole. When he reached majority, and exclusive of the three offenses charged in this case, appellant had been convicted of seven misdemeanors in Marin and Sonoma Counties. These included offenses for which, after sentencing, appellant violated his "conditional sentence" several times, assaulted another inmate at an adult detention facility, and threatened the mother of his daughter. It also included a San Francisco-based charge, which was pending at the time of his sentencing in these three cases, and involved Vehicle Code violations and the finding of both Norteño-oriented material and a loaded gun magazine in the car he was driving. In connection with that offense, appellant admitted to the San Francisco police that he was "a Norteño gang participant from Santa Rosa."

In sentencing appellant as recommended by the probation department's report (and, clearly, approved by the prosecution), the trial court noted his substantial criminal record, and also noted that, exactly a week after he had entered his no contest plea in these three cases, he had gotten into at least two disputes with officers in the jail and did not comply with their directives until they displayed a Taser. As the trial court observed, apparently correctly, appellant can be "two different people," "polite to everyone" in court but much different outside of court, even in jail. And as the probation department's extended and thorough report concluded, "the egregiousness of the defendant's current

matters, his apparent gang entrenchment, and his violent history are too overwhelming to overcome. [Appellant] has repeatedly demonstrated his propensity for arming himself with weapons, fleeing law enforcement, resisting arrest, and violently assaulting others, among other behaviors.”

Regarding the trial court’s denial of probation and the sentence it imposed, we find no issues deserving of further briefing.

IV. DISPOSITION

The judgments of the trial court, including the sentence imposed on appellant, are affirmed.

Haerle, J.

We concur:

Kline, P.J.

Richman, J.