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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR RODELAS,

Defendant and Appellant.

A137758

(Alameda County
Super. Ct. No. CH51731)

Defendant Cesar Rodelas was convicted of numerous crimes following no contest pleas to a 45-count amended information arising out of three separate incidents of serious domestic violence against his former girlfriend. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, and did so on July 26, 2013. Upon independent review of the record, and after considering the points defendant makes in his brief, we conclude no arguable issues are presented for review, and affirm the judgment.

BACKGROUND

On September 25, 2012, the Alameda County District Attorney filed an amended, 45-count information charging defendant with 11 felonies: three counts of assault with a

deadly weapon on June 11, 2011 (Pen. Code, § 245, subd. (a)(1));¹ three counts of vandalism causing over \$400 in damage on June 11, 2011, June 22, 2011, and September 19, 2011 (§ 594, subd. (a)); kidnapping on June 22, 2011 (§ 207, subd. (a); 12022, subd. (a)(1)); two counts of criminal threats on June 22, 2011 (§ 422; 12022, subd. (a)(1)); corporal injury to a cohabitant on June 22, 2011 (§ 273.5, subd. (a)), and first degree residential burglary on September 19, 2011 (§§ 459; 462, subd. (a)). The information also alleged various enhancements, including use of a deadly and dangerous weapon (an automobile) (§ 1192.7, subd. (c)(31)), serious felony (§ 1192.7, subd. (c)), armed with firearm (§ 12022, subd. (a)(1)), and out-on-bail (§ 12022.1). Defendant was further charged with misdemeanor carrying a dirk or dagger (former § 12020, subd. (a)(4)) and 33 separate counts of misdemeanor disobeying a court order (§ 166, subd. (a)(4)).

The same day, defendant entered a change of plea pursuant to a negotiated disposition. Defense counsel stated to the court, “defendant wishes to plead to the sheet essentially admitting every charge in the information. He understands he will—that his sentence will be at the court’s discretion. He understands the sentencing range is from probation to 60 years and four months in prison.” Defendant orally confirmed this was accurate. Prior to the hearing, he also had completed a written waiver of rights and plea form setting forth the same disposition. After duly advising defendant as to the rights he was waiving (including the right to appeal his conviction) and the consequences of his plea, the trial court accepted defendant’s no contest pleas and admissions of the enhancements, found his pleas were freely and voluntarily made, and found him guilty of the charges. Defendant then waived time for sentencing.

The trial court sentenced defendant on December 5, 2012. The court denied probation and imposed a 12-year prison sentence. For the principal count of kidnapping, the midterm of five years was imposed with a consecutive one year for the attached arming enhancement. One-third the midterm sentences were imposed on the counts of

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

criminal threats (eight months), corporal injury on a cohabitant (one year), first degree residential burglary (one year four months), and consecutive two-year term for out-on-bail enhancement under section 12022.1. One-third the midterm sentences were ordered on the remaining felony counts and enhancements, with those terms to be served concurrent to the previous terms. On the misdemeanor counts, the court imposed one day in county jail as to each count, to run concurrently. It also issued a 10-year protective order as to the victim, and imposed a \$10,000 restitution fine and an additional \$10,000 parole restitution fine was suspended pending successful completion of parole. Credits of 375 actual days and 56 good conduct days were determined, for a total of 431 days of presentence custody credits.

On January 28, 2013, defendant filed a timely notice of appeal.

DISCUSSION

Section 1237.5 generally precludes an appeal from a judgment of conviction after a plea of no contest or guilty unless the defendant has applied for, and the trial court has granted, a certificate of probable cause. (*People v. Johnson* (2009) 47 Cal.4th 668, 675.) There are two exceptions: (1) a challenge to a search and seizure ruling, as to which an appeal is proper under section 1538.5, subdivision (m); and (2) postplea sentencing issues. (*People v. Cole* (2001) 88 Cal.App.4th 850, 860–861, 868.) There was no search and seizure ruling in this case.

Defendant was ably represented by counsel at all times. At the sentencing hearing, the trial court considered all relevant matters, made all necessary and appropriate findings, imposed required fines and fees and issued a stay-away order as to the victim. Defendant was duly sentenced to the midterm or one third the midterm sentence for his felony offenses and for one day each on the misdemeanor counts, to be served concurrently. The trial court acted well within its discretion in denying probation and imposing the midterm. The sentence imposed was substantially less than the maximum which defendant was advised could be imposed.

In his letter brief, defendant claims he was denied due process because the court limited his oral statement at sentencing in response to the allocution to five minutes. A

defendant has a “right to make a personal statement in mitigation of punishment but only while under oath and subject to cross-examination by the prosecutor.” (*People v. Evans* (2008) 44 Cal.4th 590, 592–593.) Defendant, however, was not denied the right to make such a statement, only given a time limit. It is within the trial court’s inherent powers to control the proceedings before it. (*First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 333, 335.)

Defendant next maintains the court erred in considering a letter from the victim’s father at sentencing, claiming it violated his due process rights. “It is well settled that allowing statements from the friends and family of the victim of a violent crime does not violate due process or the defendant’s right to confront and cross-examine witnesses so long as the defendant had notice that the statements would be accepted and had an opportunity to respond.” (*People v. Mockel* (1990) 226 Cal.App.3d 581, 586–587.)

Defendant also asserts it was error to prosecute or convict him because the victim recanted her claims and the charges “were brought against him by the DA and not the victim.” This is a non-sentencing matter defendant is precluded from raising by virtue of his no contest plea. It is also the prosecutor, not the victim, who decides whether to press charges. “The crime-charging power is vested in the public prosecutor by Government Code section 26501.” (*People v. Wallace* (1985) 169 Cal.App.3d 406, 409.)

DISPOSITION

After a full review of the record, we find no arguable issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. We therefore affirm the judgment.

Banke, J.

We concur:

Dondero, Acting P. J.

Sepulveda, J.*

A137758, *People v. Rodelas*

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.