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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

AUBREY LEE BROTHERS,

Defendant and Appellant.

A138075

(San Mateo County  
Super. Ct. No. SC074089A)

Appellant Aubrey Lee Brothers appeals from his convictions and resulting sentence following his no-contest pleas to one count of residential burglary with a person present (Pen. Code,<sup>1</sup> §§ 460, subd. (a), 667.5, subd. (c)(21)), and one count of assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(1)). (He also admitted a prior conviction for a serious felony and a strike, for which he received a negotiated state prison aggregate sentence of nine years.)

Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that appellant has been notified that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of his right personally to file a supplemental brief raising any issues he chooses to bring to this court's attention. No supplemental brief has been filed by appellant personally.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

We note that appellant has not obtained a certificate of probable cause, which is required by section 1237.5 when a defendant seeks to appeal from a judgment entered following a guilty or no contest plea. A certificate is not required when the notice of appeal states, as appellant's does here, that the appeal is based upon the sentence or other matters occurring after the plea that do not affect the validity of the plea. Accordingly, we have reviewed the whole record pursuant to *Wende, supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, focusing upon grounds for appeal arising after entry of the plea. Having done so, we conclude that there is no arguable issue on appeal.

### **Procedural and Material Factual Background of Case**

A three-count amended information was filed by the San Mateo County District Attorney's Office on September 12, 2011, charging appellant with one count of residential burglary (§ 460, subd. (a)), one count of assault by means of force likely to inflict great bodily injury (§ 245, subd. (a)(1)), and one count of using force or violence upon a person (§ 243, subd. (d)). The amended pleading also alleged that the three crimes were all violent and serious felonies, within the meanings of sections 667.5, subd. (c)(21), 1192.7, subd. (c)(18), and 1203.085, subd. (b). Numerous other sentencing enhancements were alleged including that the crimes were committed while appellant was armed with a firearm (§ 1192.7, subd. (c)(8), 12022.7, subd. (a)), and that appellant had five prior convictions for certain enumerated crimes from 2003 up through 2010.

Jury trial commenced on February 13, 2013. After meeting with counsel to review certain trial-related matters, a jury was summoned. After excusing the prospective jury, the trial judge met with appellant and his counsel, and a motion for new counsel, pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, was heard by the court and denied. We discern no abuse of discretion in denying the motion.<sup>2</sup>

Prior to the jury being returned to the courtroom, appellant indicated that he wished to accept a plea disposition that had been offered by the prosecution. A plea form was completed and signed by appellant. By this negotiated plea, appellant pleaded no

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<sup>2</sup> An earlier *Marsden* motion was made by appellant and denied by the court on August 10, 2012. Likewise, we discern no abuse of discretion in denying that motion.

contest to one count of residential burglary with a person present (§ 460, subd. (a), 667.5, subd. (c)(21)), and one count of assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(1)). He also admitted a prior conviction for a serious felony conviction and a prior “strike” conviction. In return for his no-contest pleas and admissions, both sides agreed that appellant would receive a nine-year state prison sentence, of which he would be required to serve 85 percent. Appellant was given a total of 655 days custody credit for time served. Restitution, fines and penalties required by law were also imposed, along with other conditions. As part of the disposition the prosecution also agreed to dismiss the remaining counts and allegations. When the plea was accepted in court, appellant was fully advised of the rights he was waiving by entering his plea.

#### **Conclusions Based Upon Independent Record Review**

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal.

We also discern no error in the plea disposition or in sentencing. The sentence appellant received, and the restitution fines, penalties, and conditions imposed were supported by the law and facts. At all times appellant was represented by counsel.

**DISPOSITION**

The judgment is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.