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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY PASHELL,

Defendant and Appellant.

A140125

**(Del Norte County
Super. Ct. No. CRPB13-5093)**

Appellant Jimmy Pashell pled guilty to one count of assault by an inmate with a deadly weapon (Pen. Code, § 4501),¹ and admitted he suffered one prior strike (§ 667, subd. (e)(1)) and one prior serious felony conviction (§ 667, subd. (a)). Appellant was sentenced to seven years eight months in state prison. Appellant’s counsel has raised no issue on appeal and asks this court for an independent review of the record to determine whether there are any arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Appellant has not filed a supplementary brief. We find no arguable issues. We direct the trial court to correct a clerical error in the abstract of judgment, and otherwise affirm.

BACKGROUND

In August 2013, appellant was charged by information with multiple counts arising out of an incident in which appellant, while incarcerated in state prison, assaulted

¹ All undesignated section references are to the Penal Code.

a corrections officer. According to testimony at the preliminary hearing, appellant used a razor blade to slash the corrections officer's arm.

A defense motion pursuant to section 1368 was filed, seeking to suspend proceedings to allow for an evaluation of appellant's mental competence to stand trial. The motion was based on defense counsel's doubt as to appellant's competence. The People opposed the motion. At the hearing on the motion, the trial court conducted an inquiry, which included questioning appellant about his understanding of the proceedings. The court then denied the motion, finding the defense had failed to raise a sufficient doubt as to appellant's mental competence.

Appellant subsequently made a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). In a hearing held outside of the presence of the prosecutor, the trial court asked appellant to explain his dissatisfaction with his defense counsel. The trial court then asked defense counsel about his prior experience and the work he had performed in appellant's case, allowed him to respond to appellant's complaints, and inquired into his willingness and ability to continue representing appellant. At the conclusion of the hearing, the trial court denied the motion.

In October, appellant entered a plea of guilty to assault with a deadly weapon by an inmate (§ 4501), and admitted he suffered one prior "strike" (§ 667, subd. (e)(1)) and one prior serious felony conviction (§ 667, subd. (a)). The remaining charges were dismissed. The trial court sentenced appellant to a prison term of seven years eight months in accordance with the plea agreement, to be served consecutively with the term appellant was serving at the time of the offense.

DISCUSSION

We have reviewed the entire record and have found no arguable appellate issues. Appellate counsel advised appellant of his right to file a supplementary brief to bring to this court's attention any issue he believes deserves review. (*People v. Kelly* (2006) 40 Cal.4th 106.) Appellant did not file a supplementary brief. There are no legal issues that require further briefing.

Appellant was adequately represented by legal counsel throughout the proceedings. The trial court did not err in denying appellant's *Marsden* motion. The trial court also did not err in denying appellant's section 1368 motion. (*People v. Lewis* (2008) 43 Cal.4th 415, 524-525.)

Appellant completed a plea form that described the constitutional rights he was waiving by entering a guilty plea, the trial court went over those rights with appellant, and the court found appellant intelligently waived those rights and his plea was freely and voluntarily given.

The trial court's sentence was consistent with the plea agreement. The restitution and other fines imposed by the court were proper.

However, due to an apparent clerical error, the abstract of judgment indicates an enhancement of one year four months pursuant to section 1192.7, subdivision (c)(13), which provides assault by an inmate with a deadly weapon is a serious felony. The court's sentencing minutes indicate that the term was imposed pursuant to section 1192.7, subdivision (c)(3), which provides rape is a serious felony. As the transcript of the sentencing hearing makes clear, this enhancement — which doubled the term for the assault — was imposed because of appellant's prior strike conviction, pursuant to section 667, subdivision (e)(1).

DISPOSITION

The judgment is affirmed. The trial court is ordered to prepare and forward to the California Department of Corrections and Rehabilitation an amended abstract of judgment indicating the enhancement of one year four months is pursuant to section 667, subdivision (e)(1), instead of section 1192.7, subdivision (c)(3) or (13).

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.