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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.

JOSHUA J. COLE,

Defendant and Appellant.

A140167

(Alameda County Super. Ct.
No. C171028)

Defendant Joshua Cole pled no contest to one count of corporal injury to his child's mother (Pen. Code, § 273.5, subd. (a))¹ and admitted he personally inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). He also admitted a prior prison term allegation (§ 667.5). Defendant was sentenced to ten years in prison. Defendant'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. (See *Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) We find no arguable issues and affirm.

BACKGROUND

In March 2013, defendant was charged by information with two counts of forcible rape (§ 261, subd. (a)(2)), one count of forcible oral copulation (§ 288a, subd. (c)(2)(A)), and one count of corporal injury to defendant's child's mother (§ 273.5, subd. (a)), with a special allegation of personal infliction of great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). The information also alleged that

¹ All further undesignated statutory references are to the Penal Code.

defendant had suffered three prior felony convictions; that one of the prior convictions resulted in a prior prison term (§ 667.5, subd. (b)); and that another of the prior convictions was both a serious felony (§ 667, subd. (a)(1)) and a strike (§§ 667, subd. (e)(1), 1170.12, subd. (c)(1)). Defendant pled not guilty and denied the special allegations.

In May 2013, the trial court conducted a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The court denied the motion.

Subsequently, defendant pled no contest to the charge of corporal injury to his child's mother, admitted the great bodily injury allegation, and admitted the prior prison term allegation, pursuant to an agreement to a 10-year prison sentence and dismissal of the remainder of the information.

In September 2013, the trial court conducted another *Marsden* hearing and denied the motion.

In October 2013, defendant moved to withdraw his plea. The stated grounds were that defendant did not fully understand the rights he was giving up because he was under pain medication at the time of the plea and his attorney was ineffective in explaining the terms of the agreement. The court denied the motion.

The trial court sentenced defendant to the upper term of four years in prison on the section 273.5, subdivision (a) count; five years for the section 12022.7, subdivision (e) great bodily injury enhancement; and one year for the section 667.5, subdivision (b) prior prison term enhancement, for a total term of 10 years in state prison. The court also awarded custody credits and imposed fees and fines.

Defendant filed a notice of appeal and obtained a certificate of probable cause.

FACTUAL BACKGROUND

According to the offense summary in the probation officer's report, in the late evening on December 16, 2012, Oakland police were dispatched to an address on 69th Avenue to investigate a report of domestic violence. Police spoke with the victim, who stated that her ex-boyfriend, defendant, entered the residence and asked to discuss the recent breakup of their relationship. He began yelling, grabbed her by her hair, and

pulled her off a chair. He then forced her to have intercourse and to orally copulate him. Afterwards the victim saw defendant swing his right arm towards her face and she lost consciousness. Police officers noticed bruising on her face, neck, and arms as well as a bite mark (from the defendant) on a forearm.

DISCUSSION

We have reviewed the entire record and have found no arguable appellate issues. Defendant was adequately represented by legal counsel throughout the proceedings, and the trial court properly denied defendant's two requests for new counsel under *Marsden*, *supra*, 2 Cal.3d 118.

Defendant completed a plea form that described the constitutional rights he was waiving by entering a no contest plea, the trial court went over those rights with defendant, and the court found defendant knowingly and intelligently waived those rights. The prosecutor and defense counsel stipulated there was a factual basis for the plea based on the discovery in the case. The trial court did not abuse its discretion in denying defendant's motion to withdraw the plea. (*People v. Mickens* (1995) 38 Cal.App.4th 1557, 1561.)

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

Appellate counsel advised defendant of his right to file a supplemental brief to bring to the court's attention any issue he believes deserves review. (See *People v. Kelly* (2006) 40 Cal.4th 106.) Defendant did not file such a brief. We have found no legal issues that require further briefing.

DISPOSITION

The judgment is affirmed.

Simons, J.

We concur:

Jones, P.J.

Bruiniers, J.