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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.

JOSEPH DANE BEAVER,

Defendant and Appellant.

A146863

(Sonoma County
Super. Ct. No. SCR-661316)

Following a contested probation violation hearing, the trial court found defendant in violation of the conditions of probation and sentenced him to six years in state prison. We affirm the judgment.

FACTS AND PROCEDURE

We begin by summarizing the factual and procedural history leading up to the revocation of defendant's probation.¹

During an argument between Jane Doe and defendant on January 21, 2015, defendant hit Ms. Doe with the palm of his hand, head-butted her, and stomped on the top of her left foot. The next day defendant punched Ms. Doe with closed fists between 10 to 15 times in the head, ribs, arms, and legs. As he left for work, defendant told Ms. Doe if he went to prison over this incident, upon release, he would kill her.

On February 24, 2015, the Sonoma County District Attorney filed a first amended complaint charging defendant with two counts of inflicting a corporal injury on a

¹ The facts are taken from defendant's felony presentence report and the October 6, 2015 reporter's transcript.

cohabitant (Pen. Code,² § 273.5, subd. (a); counts I and III), dissuading a witness by force (§ 136.1, subd. (c)(1); count II), and two misdemeanor counts of violating a protective order (§ 166, subd. (c)(1); counts IV and V).

Pursuant to a negotiated disposition, after the complaint was amended to add count VI, misdemeanor dissuading a witness from reporting a crime (§ 136.1, subd. (b)), defendant pled guilty to counts I and IV, and count VI. The parties agreed to a stipulated term of one year in jail, and upon release from custody, defendant would enter a residential treatment program. After reading the presentencing report in which defendant expressed a lack of remorse, however, the court declined to follow the negotiated sentence and “withdrew” defendant’s plea.

The prosecutor subsequently filed a second amended complaint on April 27, 2015, to further allege defendant personally inflicted great bodily injury (§ 12022.7, subd. (e)) in counts 1 and 2. On the same day the second amended complaint was filed, pursuant to an agreed upon disposition, defendant pled guilty to count 1, inflicting corporal injury on a cohabitant, and count 2, dissuading a witness by force. The remaining counts and enhancements were to be dismissed at sentencing. Defendant further agreed to an “open plea” in which the trial court could either grant probation or sentence him to prison. The prosecutor indicated that should the court sentence defendant to prison, the maximum exposure at the time of the *initial* sentence would be the mitigated term “two years plus the three for the 136.1(c).” However, if defendant were granted probation, and then violated it, his maximum exposure would be seven years. At the sentencing hearing held on August 4, 2015, the court granted defendant probation with various terms and conditions including be of good conduct and obey all laws.

A month later on September 4, 2015, defendant’s probation was summarily revoked based on an incident occurring in late August or early September. Defendant’s stepfather reported to jail guards that while visiting with defendant, they discussed Jane Doe’s 10-year restraining order. During their conversation, defendant stated no piece of

² All statutory references are to the Penal Code.

paper would keep him away from his child, and Ms. Doe would pay for putting him in jail and taking his child away from him. Defendant also stated Ms. Doe's mother and father would be the first to go, and he would not kill Ms. Doe, but attack her with a baseball bat and make sure she lived with "no family."

Following a contested probation revocation hearing, the court found defendant in violation of probation by failing to be of good conduct and obey all laws. Subsequently, the court sentenced defendant to serve the midterm of three years in state prison on count 1 of the second amended complaint. He was additionally ordered to serve the full midterm of three years consecutively on count 2 under section 1170.15.³ Defendant's total sentence was six years with credit for time served of 600 days.

DISCUSSION

After defendant appealed, counsel was appointed to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, setting forth a statement of the case and a summary of the facts, and requesting this court conduct an independent review of the record. Counsel has notified defendant he can file a supplemental brief with the court. No supplemental brief has been received from defendant.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable error that would result in a disposition favorable to defendant.

Defendant was ably represented by counsel throughout the proceedings. We find no indication in the record counsel provided ineffective assistance. Substantial evidence supported the trial court's decision to revoke defendant's probation. We also find the court committed no sentencing error.

³ Section 1170.15 provides that when a defendant is convicted of a felony, and also convicted of a violation of section 136.1 (dissuading a witness) involving a witness to the first felony, "the subordinate term for each consecutive offense" of dissuading a witness must be the full middle term.

DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Banke, J.

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