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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH HENDERSON,

Defendant and Appellant.

B233609

(Los Angeles County
Super. Ct. No. BA 273725)

APPEAL from an amended judgment of the Superior Court for the County of Los Angeles. Lance A. Ito, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Joseph Henderson was charged with six felony counts: assault with intent to commit a felony; forcible oral copulation; assault with a deadly weapon; attempted willful, deliberate and premeditated murder; aggravated mayhem; and torture. The jury convicted defendant on all counts except the forcible oral copulation count. The jury also found true the corresponding special allegations, and the court, in bifurcated proceedings, found true seven of the prior prison term enhancements. Defendant was sentenced to two consecutive life terms with the possibility of parole plus 17 years.

Defendant appealed. He challenged the admission of evidence of a prior sex offense; contended there was insufficient evidence of attempted murder, aggravated mayhem, and torture; and alleged sentencing errors. This court affirmed the judgment, but found the claim of sentencing error meritorious. (*People v. Henderson* (July 20, 2010, B212556) [nonpub. opn.].) Specifically, count 1 of the information, charging defendant with assault with intent to commit a felony in violation of Penal Code section 220, did *not* contain any special allegations of use of a deadly weapon or intent to cause great bodily injury, but the trial court imposed a six-year upper term on that count, *plus* three years for infliction of great bodily injury (Pen. Code, § 12022.7, subd. (a)) and one year for use of a deadly weapon (Pen. Code, § 12022, subd. (b)(1)). While the jury found these enhancements to be true as to several of the other counts, the jury did not make any findings on these two enhancements with respect to count 1, so it was error to enhance defendant's sentence on count 1.

We remanded the case, observing the trial court had discretion to reconsider the sentence to be imposed on all counts and relevant enhancements. (*People v. Navarro* (2007) 40 Cal.4th 668, 681.) The trial court resentenced defendant, eliminating the four years for the improper enhancements on count 1 but making no other changes, so that the sentence imposed was two consecutive life sentences with the possibility of parole, plus 13 years.

Defendant appealed. His court-appointed counsel filed a brief requesting this court's independent review of the record under *People v. Wende* (1979) 25 Cal.3d

436. Counsel advised defendant of his right to file a supplemental brief, and sent defendant the record on appeal and a copy of counsel's *Wende* brief. Defendant then filed a letter to the court on February 15, 2012.

We have reviewed the record and have considered defendant's letter. We have found no arguable issues. Defendant's letter does not challenge the reduced sentence imposed by the trial court, but instead asks for a sentence modification or a new trial "based on DNA evidence, insufficient evidence, ineffectual counsel and new evidence and testimony." These are claims, however, that either were or should have been raised in defendant's first appeal, and cannot be raised on an appeal from resentencing.

In any event, the evidentiary claims were resolved in defendant's first appeal. And, even if we were to consider his ineffective-assistance-of-counsel claim, defendant has not made the necessary showing. His claim is based on counsel's failure to present witnesses on his behalf: an expert witness on "blunt object blows"; the victim's ex-boyfriend (to give "character testimony as to [the victim] being a drug addict, medical and dental history and also that she was homeless"); and the downstairs neighbor. To establish an ineffective assistance of counsel claim, defendant must first demonstrate that counsel's performance fell below an objective standard of reasonableness; courts presume that "counsel's actions and inactions can be explained as a matter of sound trial strategy" unless defendant establishes the contrary. (*People v. Lopez* (2008) 42 Cal.4th 960, 966.) And even then, defendant would have also to show that counsel's deficiencies resulted in prejudice, "that is, a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (Ibid.) Neither of these showings has been made.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.