

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TAMMY ROSE DUREN,

Defendant and Appellant.

B236450

(Los Angeles County
Super. Ct. No. TA112935)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Allen J. Webster, Jr. Judge. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Tammy Rose Duren of assault by means likely to produce great bodily injury (count 2; Pen. Code, § 245, subd. (a)(1)),¹ with a not true finding as to an allegation that Duren inflicted great bodily injury (§ 12022.7, subd. (a)). The jury also convicted Duren of misdemeanor battery (count 1; § 242), a lesser included offense of a charge of battery with serious bodily injury (§ 243, subd. (d)). Duren waived jury trial on various prior conviction allegations, and the trial court found true that Duren had suffered two convictions which qualified as prior strikes, prior serious felony convictions, and prior convictions with a prison term. (§§ 667, subds. (b)-(i); 667, subd. (a)(1); 667.5, subd. (b).) The court subsequently granted Duren's motion to strike one of the prior strike findings. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.) The trial court sentenced Duren to 9 years in state prison as follows: on the aggravated assault conviction: the high term of 4 years, doubled for a strike to 8 years, plus 1 year for a prior conviction with a prison term. The trial court imposed a concurrent 6-month term for the misdemeanor battery conviction, to be served in any facility. No term was imposed pursuant to section 667, subdivision (a)(1). We affirm.

FACTS

On June 22, 2010, Cheryl McDaniel (the crime victim) walked to a local store to purchase beer for a family get-together. Outside the store, Duren approached McDaniel and asked for money. McDaniel said no, and went into the store. At the counter, Duren walked up to McDaniel and threw one punch, hitting her in the face, knocking her down and backward. McDaniel hit her head on the concrete floor. McDaniel's son came upon the scene within minutes of the incident, and took McDaniel to a hospital where medical tests revealed no abnormalities. McDaniel was released from the hospital after about one and one-half hours. A few days after the incident, McDaniel saw Duren outside McDaniel's apartment complex. McDaniel called police, and Duren was arrested.

¹ All further section references are to the Penal Code.

In late 2010, the People filed an amended information charging Duren as follows: felony battery with serious bodily injury (count 1; § 243, subd. (d)); and assault by means likely to produce great bodily injury (count 2; § 245, subd. (a)(1)). As to the aggravated assault count, the information alleged that Duren personally inflicted great bodily injury. (§ 12022.7, subd. (a).) Further, the information alleged that Duren suffered three prior convictions, all three of which qualified as strikes, prior serious felony convictions, and prior convictions with a prison term. (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d); 667, subd. (a)(1); 667.5, subd. (b).)²

The case was tried to a jury in August 2011. The prosecution evidence established the facts summarized above. Duren called a medical expert who testified that the victim, McDaniel, had not presented with serious injuries at the hospital emergency room on the day of the incident.

On August 30, 2011, the jury returned a verdict finding Duren guilty of the crime of misdemeanor battery (§ 242), a lesser offense of the felony battery with serious injury charged in count 1. The jury returned a verdict finding Duren guilty of assault by means likely to produce GBI as charged in count 2. The jury found the allegation that Duren had personally inflicted GBI in the commission of the assault to be not true.

On September 23, 2011, the trial court found allegations of prior convictions in 2008 in Los Angeles County for aggravated assault and in 1987 in Missouri for manslaughter (Duren had killed her sister with a rifle) were strikes, but the People had failed to prove that a conviction in 1987 in Missouri for “armed criminal action” included enough elements to satisfy the definition of a strike or serious felony under California law. The trial court thereafter granted Duren’s *Romero* motion to strike the 2008 strike conviction for purposes of sentencing. The trial court sentenced Duren as noted above.

² The alleged prior convictions included: (1) aggravated assault in 2008 in Los Angeles County; (2) voluntary manslaughter in 1987 in Jackson County, “MS;” and (2) “armed criminal action” in 1987, also in Jackson County, “MS.” Actually, it was Jackson County, Missouri (“MO”).

DISCUSSION

We appointed counsel to represent Duren on appeal, and counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, setting forth the facts of the case and requesting we review the record on appeal for arguable issues. On April 19, 2012, we notified Duren by letter that she could submit any claims, arguments or issues which she wished our court to consider. Duren has not filed a letter brief.

We have independently reviewed the record on appeal, and are satisfied that Duren's appointed counsel has fulfilled her duty, and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.