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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL CASTRO,

Defendant and Appellant.

B239985

(Los Angeles County  
Super. Ct. No. BA373435)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jose I. Sandoval, Judge. Affirmed.

Manuel Castro, in pro. per.; California Appellate Project, under appointment by the Court of Appeal, Jonathan B. Steiner, Executive Director, and Ann Krausz for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted Manuel Castro of assault by means of force likely to produce great bodily injury and found that he personally inflicted great bodily injury under circumstances involving domestic violence. After defendant was convicted, but before he was sentenced, he substituted retained counsel for appointed counsel. Defendant's

new attorney then declared a doubt regarding defendant's competency. The trial court appointed four psychiatrists in succession. The first psychiatrist, who did not have access to all of defendant's records, opined that defendant was incapable of understanding the nature of the proceedings and assisting counsel. The third psychiatrist rendered the same opinion, but had access to no records. The second and fourth psychiatrists, who had access to a variety of records, including those of the jail medical staff, opined defendant was malingering. The trial court found defendant competent and sentenced him to eight years in prison, consisting of the middle term of three years for the offense and the high term of five years for the great bodily injury enhancement.

On the night of January 26, 2010, defendant repeatedly punched and possibly kicked his former girlfriend, Sarah Blanchard, in the face, breaking her nose and causing bruising around the eyes and on the cheeks that took two months to heal. Blanchard testified that during the two months she dated defendant, he punched her in the face on several occasions, sometimes striking her repeatedly.

Defendant filed a timely appeal. We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. Defendant filed a supplemental brief listing 10 "concerns" that he felt appellate counsel should have raised. We briefly address each of defendant's concerns.

Defendant argues he "was not allowed to testify on [his] own behalf." The appellate record disproves this claim. Defense counsel asked defendant, on the record, whether he wanted to testify. Defendant responded, "No, not really."

Defendant next argues he "was not provided an investigator to follow up on the location of any/and all witness testimony." Defendant was represented by the Alternate Public Defender's office. The record does not demonstrate that the office did not utilize the services of its investigators on defendant's case.

Defendant argues he “believed that [he] had a 5 year sentence maximum and not nine years.” Defendant’s maximum sentence was nine years. He was properly sentenced to eight years.

Defendant next argues that he “should have had a psychological evaluation done *prior* to trial—not after.” Nothing in the record suggests any basis for counsel or the court to have declared a doubt about defendant’s competency.

Defendant asserts, “I have been a member of the Regional Center since my youth for my Developmental Disability, and at the time and during trial I was taking psychotropic medication.” This would appear to be another assertion by defendant that he was incompetent to stand trial, but is insufficient to demonstrate error and, to the extent he refers to medications, unsupported by the record. We note that the reports of the two psychiatrists who opined defendant was competent indicated that they spoke to defendant’s case manager at the Frank D. Lanterman Regional Center, who told them that defendant was a regional center client due to his epilepsy.

Defendant next claims he “was punished as the result of an act due to my mental retardation (logically self-contradiction) [*sic*] verdict of guilt—but mentally ill.” Guilty but mentally ill is not a possible verdict in California. Nothing in the appellate record would have supported a finding that defendant “was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense,” which is the test for both insanity and mental incapacitation under Penal Code sections 25 and 26, respectively. (*People v. Phillips* (2000) 83 Cal.App.4th 170, 173.)

Defendant claims his trial attorney rendered ineffective assistance of counsel, citing the immediately preceding claim and his other contentions about not being allowed to testify, not being given an investigator, and the absence of a pretrial psychological evaluation. Because defendant declined to testify, the appellate record does not show that the Alternate Public Defender’s office did not utilize the services of an investigator on defendant’s case, and the appellate record reveals nothing that would have caused

counsel to suspect that defendant was insane, mentally incapacitated, or incompetent to stand trial, defendant has not demonstrated ineffective assistance of counsel.

Defendant next argues that “one of the jury members made an inappropriate gesture toward” him. Nothing in the appellate record supports this claim.

Defendant next contends that his “photograph was placed twice in the photo lineup (‘six-pack’) for identification.” Nothing in the record indicates that any six-pack, let alone one with two photographs of defendant, was shown to anyone. Even if this contention had support in the record, there could be no possible prejudice because the victim had dated and lived with defendant for about two months shortly before the commission of the charged crimes. There is no possibility she misidentified defendant.

Finally, defendant argues his “due process and Fifth Amendment rights were violated.” This conclusory claim fails to describe any act or omission that might have violated defendant’s rights. If this claim is based upon any or all of the nine preceding claims, it has no more merit than the claims themselves.

We have examined the entire record and are satisfied that defendant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

#### **DISPOSITION**

The judgment is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.