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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DONTA T. BUTLER,

Defendant and Appellant.

B242709

(Los Angeles County
Super. Ct. No. TA122295)

APPEAL from a judgment of the Superior Court of Los Angeles County, Paul Bacigalupo, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Cheryl Lutz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Donta T. Butler appeals from the judgment entered following his plea of no contest to two counts of attempted murder (Pen. Code, §§ 664, 187, subd. (a)),¹ and his admissions that during the offenses he personally used a firearm (§ 12022.53, subd. (b)) and, with regard to the attempted murder alleged in the first count, the offense was committed for the benefit of, at the direction of and in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). The trial court sentenced Butler to 30 years 8 months in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

In March 2012, Los Angeles County Deputy Sheriff Paul Carmona was assigned to “patrol” at the Compton Station. During the late evening hours of a day early in the month, Carmona received a call regarding a shooting at 14502 South Keene Street in Gardena. Carmona went to the address and spoke with one of the victims, Dywan Callahan.

Callahan told the deputy that he and two acquaintances, Gerard Williams and Quondale Rising, had been standing in the driveway when he saw two men wearing black hooded sweaters walk by. After he heard one of the men ask for “some weed,” the shorter of the two men began shooting a gun at Callahan and the other two men. At the time of the shooting, Callahan, Williams and Rising were standing next to a black Chevy Monte Carlo parked in front of the house. Callahan “ran behind the vehicle[],” which belonged to Rising.

Carmona also interviewed Williams. Williams, too, indicated that, while he was standing with Callahan and Rising, two men in black hooded sweaters walked by. Williams stated he heard the taller of the two men ask for “some weed.” The shorter man then began shooting at Williams.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The facts have been taken from the transcript of the preliminary hearing.

Rising told the deputy that he had been leaning against his vehicle when two men walked by. He overheard one of the men ask for “some weed” and then the shorter of the two men began shooting at him. The man fired approximately four or five shots.

Carmona then spoke with a woman, Krista Wallace, who had been inside the house at the time of the shooting. She stated that she heard “approximately five shots” fired.

When Carmona inspected the area, he saw bullet holes in Rising’s car and in one of the windows of the house. Carmona recovered an “expended bullet” from one of the holes in the car.

Just after midnight on March 4, 2012, Los Angeles County Deputy Sheriff Christopher Quintero and his partner were at a 7-Eleven store on the north side of Rosecrans Avenue. Quintero heard six or seven gunshots and the deputies, who were wearing uniforms and driving a marked patrol car, drove south, across Rosecrans to Keene, then turned onto 144th Street to the area where they believed the shots had been fired.

After turning onto 144th Street, Deputy Quintero saw a “dark-colored Dodge Charger” turning onto 144th from a street named Bahama. At first the car accelerated, then the deputy saw its brake lights go on. As he drove faster to catch up with the Charger, Quintero saw “two males running in the middle of the street.” The Charger then accelerated again and drove off at a high rate of speed.

Quintero pulled his car up behind the two men who were running. After turning and looking in the deputies’ direction, one man ran south, across 144th Street, while the other man ran north. Quintero was able to continuously watch the man who ran north and he could see that he was holding a handgun in his right hand. Quintero followed the man until he was approximately 10 feet from him, stopped his car and aimed his gun, which he had earlier pulled from its holster, at the suspect. The man, who was next to a wall and still holding a gun, stopped and pivoted so that his face and upper body were facing Quintero. Fearing for his and his partner’s life, Quintero fired his own weapon

five times, hitting the man in his right forearm. The man, who Quintero later identified as Butler's codefendant, Michael Atkins, then dropped his gun onto the hood of Quintero's vehicle and put both his arms out to the side. Quintero "detained [Atkins] at gunpoint" and called for additional units. Paramedics also came to the scene.

A short time later, Quintero was transported by other deputy sheriffs "out to the field." There, he was "shown the suspect that they had detained to confirm that it was the person" he had seen run south on 144th Street. Quintero identified the second suspect, whom he referred to as "Donta Smith."

On March 4, 2012, Michael Kurinij was a detective with the Operations Safe Streets Bureau, a "gang detective unit for the Los Angeles County Sheriff's Department." He was assigned to the Compton Sheriff's station and was one of the deputies who responded to the "deputy-involved shooting that took place [that night at] Central and 144th Street." There, Kurinij recognized Atkins as a member of the Swamp Crips gang. Kurinij was also familiar with Butler, who was a member of the same gang and had the gang's logo tattooed on his right forearm.

After responding to the location where the officer-related shooting occurred, Kurinij began to listen to "radio traffic" and he realized that there had been a shooting on South Keene Street, just "two-and-a-half blocks from the location of the deputy involved shooting." Kurinij went to the address on South Keene Street "to ensure that a first report was being taken by deputy personnel and to begin [an] investigation." After learning that there had been two men involved in the Keene Street shooting, Kurinij believed that Atkins was a suspect and that it was likely the second suspect was also a member of the Swamp Crips gang. Kurinij then heard a radio broadcast that the second suspect had been taken into custody and had been identified as Butler.

Kurinij went to the location where Butler was being detained. Based on the number of bullet casings which had been recovered at Keene Street, Kurinij believed a second gun, one other than the one recovered from Atkins, had been used during the shooting. Kurinij retraced the route he believed Butler had taken when he ran from

Quintero and found a gun. There were “expended casings in the gun,” but “[t]he projectiles were gone.” Kurinij later interviewed Butler in the back seat of a patrol car at the corner of Bahama and 144th Street. After advising Butler of his *Miranda*³ rights, Kurinij asked him if, during the incident on Keene Street, he had had a revolver. Butler indicated that he had and that Kurinij had “ ‘found it.’ ”

Later, at the police station, Kurinij again interviewed Butler. After Kurinij spoke to Butler about a shooting which had occurred approximately one year earlier during which one of Butler’s friends had been killed and Butler had been wounded by members of the Campanella Camp Parks gang, Butler admitted that he had been walking through that gang’s territory “looking to get revenge . . . for what had [happened to his friend] and to him.” Butler told Kurinij that, as he and Atkins walked past the three victims, “he recognized them as hanging out with Campanella and that he fired his firearm at them.” He and Atkins then ran to 144th Street. However, when they realized a police car was following them, the two men split up. Butler ran south. When he then heard gunfire, he threw his gun down and hid. Butler was detained by deputies at approximately 4:00 o’clock that morning.

During second and third interviews Kurinij had with Butler, he indicated he had been “forced to do [the Keene Street shooting] by members of the Swamp Crip gang and that he feared retribution from them if he did not do it.”

Kurinij also interviewed Atkins. The detective interviewed him on March 5, 2012 at the county hospital. After a time, Atkins indicated he was the individual who had “asked [the] three victims about the weed.” He then stated he had fired one round at the three men “after hearing gunfire next to him.” Kurinij indicated that, of the two men, Atkins and Butler, Atkins is the taller.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

2. *Procedural history.*

In an amended information filed May 8, 2012, Butler was charged with three counts of attempted willful, deliberate and premeditated murder (§§ 664/187, subd. (a)) (counts 1, 2 and 3), each of which was characterized as a serious or violent felony (§§ 1192.7, subd. (c)(8), 667.5, subd. (c)(8)) in that he had personally and intentionally discharged a firearm, a handgun (§ 12022.53, subd. (c)) and committed the offenses to promote, further or assist in felonious conduct by members of a criminal street gang (§ 186.22, subd. (b)(1)(C)). It was further alleged with regard to the attempted murders that, if life sentences were imposed, Butler was required to serve at least 15 calendar years of those sentences in state prison (§§ 186.22, subd. (b)(5), § 1170, subd. (h)(3)). Butler was also charged with shooting at an inhabited dwelling (§ 246) (count 6), a serious felony (§ 1192.7, subd. (c)), committed for the benefit of, at the direction of, and in association with a criminal street gang (§§ 186.22, subd. (b)(1)(C), 1192.7, subd. (c)(28)). It was again alleged that any time to which he was sentenced for the offense was to be served in state prison (§ 1170, subd. (h)(3)).

At proceedings held on May 24, 2012, Butler indicated that he was willing to accept an offer the People had made for a term in state prison of 30 years and eight months.⁴ In exchange, Butler would plead no contest to “two counts of [second degree] attempted murder with firearms [and gang] allegations.”

After waiving his right to a court or jury trial, his right to confront and cross-examine the witnesses against him, his right to use the subpoena power of the court to “bring in witnesses to testify on [his] behalf free of charge,” his right to present a defense and to testify on his behalf and his right to remain silent, Butler pled no contest to the attempted murder of Dwyan Jonte Callahan as alleged in count 1 and admitted the allegations that the offense was “committed for the benefit of, at the direction of, or in association with a criminal street gang, within the meaning of . . . section 186.22[

⁴ In view of the crimes charged, Butler faced a life sentence.

subdivision] (b)(1)(C)” and that during the offense he “personally used a firearm within the meaning of . . . section 12022.53[, subdivision] (b).” With regard to count 2, Butler pled “[n]o contest” to the charge he violated “section[s] 664/187 in that [he] committed an attempted murder on Gerard Quincy Williams” and admitted the allegation that he “personally used a firearm in the commission of that offense, within the meaning of . . . section 12022.53[, subdivision] (b).” The prosecutor and Butler’s counsel then “join[ed] in the waivers, concur[red] in the plea[s], and stipulate[d] to a factual basis for the plea[s] based upon the police reports and preliminary hearing transcript” The trial court found Butler had “expressly, knowingly, intelligently, and understandingly waived [his] constitutional rights,” that his “pleas and . . . admissions [had been] freely and voluntarily made with an understanding of the nature and consequences” and that there had been a “factual bas[is] for the pleas and for the admissions.”

For his conviction of attempted murder as alleged in count 1, the trial court imposed the low term of five years in prison. For the “gang allegation” and the “gun allegation,” the court imposed a term of 10 years for each, for a total term of 25 years. For the attempted murder alleged in count 2, the court imposed one-third the mid-term, or two years and four months, and for the “gun use” during the offense, the court imposed a term of three years four months. In total, the court sentenced Butler to 30 years 8 months in prison. The trial court then dismissed the remaining charges and allegations.

After awarding Butler presentence custody credit for 82 days actually served and 12 days of conduct credit, or 94 days, it imposed a \$1,000 restitution fine (§ 1202.4, subd. (b)), a stayed \$1,000 parole revocation restitution fine (§ 1202.45), an \$80 court security fee (§ 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373).

Butler filed a timely notice of appeal on July 18, 2012.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed December 28, 2012, the clerk of this court advised Butler to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On August 13, 2012, Butler filed a document in which he asserted he had filed a notice of appeal because he wished to argue that he had had ineffective assistance of counsel in the trial court. However, on July 30, 2012, the Administrative Presiding Justice of this court had filed an order indicating that, “[i]n light of the fact that there is no certificate of probable cause, the appeal, filed on July 18, 2012, is limited to non-certificate issues.” As ineffective assistance of counsel is not a non-certificate issue, we may not consider it. (See *People v. Johnson* (2009) 47 Cal.4th 668, 677.)

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d.436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.