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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.

BRUCE HANEY,

Defendant and Appellant.

B263995

(Los Angeles County
Super. Ct. No. LA079912)

APPEAL from an order of the Superior Court of Los Angeles County. Gregory A. Dohi, Judge. Affirmed.

Bruce Haney, in pro. per.; and Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Appellant Bruce Haney of attempted voluntary manslaughter after he stabbed Robert Williams in the neck with a butter knife, narrowly missing Williams's carotid artery. His appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues on appeal and requesting that we independently review the record. Haney filed two supplemental briefs raising several issues.¹ We affirm the judgment of the trial court.

FACTS AND PROCEEDINGS BELOW

Haney and Williams were residents of Los Angeles Family Housing, a facility in the San Fernando Valley dedicated to assisting the homeless transition to permanent housing. Haney spent the day of April 11, 2013 drinking heavily, and also smoked crack cocaine.

Just before the facility's 10:00 p.m. curfew, Haney and Williams were involved in a physical altercation near the primary entrance to the facility. According to Williams, he and Haney had a disagreement regarding the terms of a drug deal. Haney called Williams an offensive name, and Williams pushed Haney. According to Haney, Williams attacked Haney when Haney refused to take part in a drug deal. Haney testified that, after he fell to the ground, Williams either kicked him or hit him with a pipe, leaving him in severe pain. An x-ray performed approximately one month later showed partially healed fractures in two of Haney's ribs.

Almost immediately after the altercation, Haney and Williams lined up to enter the housing facility. The facility's security guard had heard about the fight and asked Haney and Williams if everything was "cool." They both replied in the affirmative.

Haney retired to his bed in the facility's dormitory. Williams went to a nearby table outside Haney's dorm and began talking in a loud voice about his fight with Haney. Another resident testified that Williams said "he had to crack someone because they were

¹ Haney separately filed a petition for writ of habeas corpus raising issues identical to those in his supplemental briefs. We address his habeas petition in a separate order.

disrespecting him.” According to Haney, a different resident overheard Williams and came to warn Haney that Williams and his friends were “ ‘coming in to get you.’ ”

Haney testified that he picked up a butter knife he kept with his belongings and waited for Williams to enter. According to Haney, when no one came in, he walked out of the dorm, planning to leave the facility. As he left the dorm, he made eye contact with Williams at a nearby table. A surveillance video depicted Haney approaching Williams and stabbing him in the neck. Haney claimed that he had been planning to walk past Williams, but attacked after he saw Williams shift his weight in a menacing manner. The surveillance video does not show any movement by Williams prior to the stabbing. Haney also claimed that he aimed to hit Williams’s head, rather than his neck, in the hope of inflicting pain so that Haney could escape. According to the surgeon who treated Williams in the hospital, the knife came within one millimeter of Williams’s carotid artery. The surgeon testified that if the knife had severed the artery, Williams could have bled to death if he were not treated immediately.

In an interview the next day, Haney told a police detective, “I probably seen [the knife] and grabbed it and like, man I’m gonna go out there and do this mother fucker.” The detective asked Haney, “[Y]ou’re swinging for his, what area, were you saying is, his neck?” Haney responded, “It must have been. That would have been the main target.” Later, jail officials recorded a phone call from Haney in which he stated, “I hit him damn near in his jugular vein, damn near where I was aiming at and I was drunk when I did that. . . . [¶] . . . [¶] All he felt was that steel and that nigga trying to get away from me and then somebody grabbed me—that’s probably what saved his life.”

An information, filed on January 21, 2015, charged Haney with (count 1) attempted murder, in violation of Penal Code sections 664 and 187, subdivision (a),² and (count 2) assault with a deadly weapon, in violation of section 245, subdivision (a)(1). The information alleged that Haney inflicted great bodily injury while committing these offenses (§ 12022.7, subd. (a)), that he personally used a deadly weapon while

² Unless otherwise specified, subsequent statutory references are to the Penal Code.

committing the attempted murder (§ 12022, subd. (b)(1)), that he had suffered one previous serious felony conviction and three prison priors (§§ 667, subd. (a)(1), 667.5, subd. (b)), and that he had committed one previous strike offense. (§ 1170.12.)

A jury found Haney not guilty of attempted murder, but guilty of the lesser included offense of attempted voluntary manslaughter. (§§ 664, 192, subd. (a).) The jury also found Haney guilty of assault with a deadly weapon, and found the allegations of infliction of great bodily injury and personal use of a deadly weapon true. Haney admitted his prior convictions. He moved that the trial court dismiss his prior strike for purposes of sentencing pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), but the trial court denied the motion. The court sentenced Haney to a total term of 19 years in prison, as follows: for attempted voluntary manslaughter, the high term of five and one half years, doubled to 11 years because of Haney's prior strike; for his prior serious felony, five years, to be served consecutively; and for the great bodily injury enhancement, three years, to be served consecutively. The court struck the three 1-year enhancements for prison priors, along with the deadly weapon allegation. The court stayed Haney's sentence for assault with a deadly weapon pursuant to section 654.

We appointed counsel to represent Haney in this matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. On April 20, 2016, we sent a letter to Haney and to counsel. In the letter, we directed counsel to immediately send the record on this appeal and a copy of the *Wende* brief to Haney and informed him that he had 30 days to submit by letter or brief any ground of appeal, contention or argument he wished us to consider. In response, Haney filed a supplemental brief, then a second supplemental brief raising an additional issue.

DISCUSSION

We have reviewed the entire record and determined that substantial evidence supports Haney's conviction for attempted voluntary manslaughter. (*People v. Johnson* (1980) 26 Cal.3d 557, 578 [substantial evidence is that which is "reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt"].) We are satisfied that Haney's counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.) As we explain below, we find no merit in the issues Haney raises in his supplemental briefs. We therefore affirm the judgment of the trial court.

In his first supplemental brief, Haney contends: (1) The trial court abused its discretion by sentencing Haney to the high term for attempted voluntary manslaughter; (2) The prosecution engaged in misconduct by submitting false statements to the court in response to Haney's *Romero* motion; (3) The trial court abused its discretion by failing to grant his *Romero* motion; and (4) His trial counsel provided him with ineffective assistance of counsel in several different instances. (5) Haney filed a second supplemental brief contending that his attorney on appeal provided him with ineffective assistance of counsel by filing the *Wende* brief.

(1) Haney contends that the trial court abused its discretion by refusing to consider mitigating circumstances when imposing the upper term as Haney's sentence for attempted voluntary manslaughter. In fact, the record shows that the trial court did consider mitigating factors, but found they were outweighed by aggravating factors, including the violence of the crime, Haney's lack of remorse in statements to the police, and his lack of truthfulness in testifying. The trial court has discretion to choose between the lower, middle, and upper terms of a sentence, and a "single factor in aggravation will support imposition of an upper term." (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433.) The court did not abuse its discretion in choosing the upper term.

(2) Haney contends that the prosecution committed misconduct by submitting false and misleading statements to the jury, and also in opposition to Haney's motion to strike his prior strike for purposes of sentencing, pursuant to *Romero, supra*, 13 Cal.4th 497. Haney objects to the prosecution's statement in its opposition to the *Romero* motion that Haney "marched to his room, retrieved a nine-inch kitchen knife from his personal effects, approached the victim and intentionally and specifically stabbed him in the neck." He also objects to the prosecution's statement in the *Romero* opposition that Haney admitted to having stabbed inmates on previous occasions when he was in prison. Finally, he objects to the prosecution's statement to the jury during closing arguments that Haney had recently served 10 years in prison and was a dangerous person, without clarifying that Haney had been convicted of a nonviolent crime. All of these prosecution statements find support in the record. Haney's statements admitting that he had stabbed other inmates while in prison were admitted pursuant to Evidence Code section 1103, subdivision (b), as evidence of Haney's character for violence, to counter evidence Haney introduced regarding Williams's own character for violence. Haney's prior prison sentences were admitted pursuant to Evidence Code section 1101, subdivision (c), as impeachment of Haney's testimony. The prosecution may have described Haney's actions in a light unfavorable to Haney, but this was within the prosecution's "wide latitude to draw inferences from the evidence presented at trial." (*People v. Hill* (1998) 17 Cal.4th 800, 823.) The prosecution's statements did not constitute prosecutorial misconduct.

(3) Haney contends that the trial court abused its discretion in denying his motion to strike his prior strike for purposes of sentencing, pursuant to *Romero, supra*, 13 Cal.4th 497. In an appeal of a trial court's decision denying a *Romero* motion, " "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary." ' ' (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) Moreover, "a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.) Here, the record shows that the trial court took into account the mitigating factors and decided that they

were insufficient to warrant granting the *Romero* motion. The court stated as follows: “[E]ven though the prior is very old, the defendant has been in almost continuous custody since its commission. They counted five felony priors, numerous parole violations, and I’m confirming that as I go through the probation report. The defendant’s performance on probation and parole has not been satisfactory, and the current offense, which was captured on video tape, involved extreme violence.” The trial court acted within its discretion in denying the *Romero* motion.

(4) Haney alleges several instances of ineffective assistance of his trial counsel. He contends that his trial counsel rendered ineffective assistance by: (a) failing to question a witness regarding statements he made to an investigator; (b) failing to question a police witness regarding his conduct in the investigation; (c) failing to question Williams regarding his compensation for testifying; (d) failing to question Williams about his use of illegal drugs and prescribed psychiatric medication; and (e) failing to question a witness regarding his consumption of alcohol, and to question Williams’s doctor about Williams’s mental health.

“To establish ineffective assistance of counsel, a defendant must show that (1) counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient performance was prejudicial, i.e., there is a reasonable probability that, but for counsel’s failings, the result would have been more favorable to the defendant. [Citation.] ‘A reasonable probability is a probability sufficient to undermine confidence in the outcome.’ (*Strickland v. Washington* (1984) 466 U.S. 668, 694.)” (*People v. Scott* (1997) 15 Cal.4th 1188, 1211-1212.)

Even if we assume for the sake of argument that Haney’s counsel was deficient, his claims fail because he cannot show a reasonable probability of a more favorable outcome if counsel had not made any of Haney’s alleged errors. The evidence against Haney was overwhelming. In addition to the surveillance video footage that showed Haney initiating the attack on Williams, the prosecution introduced recordings of an interview with police and jailhouse phone calls in which Haney stated that he left

the dormitory with the intention of stabbing Williams, and that his target was the jugular vein in Williams's neck. The jury convicted Haney of attempted voluntary manslaughter, rather than attempted murder, indicating that jurors believed Haney acted either in the heat of passion or with an unreasonable belief that he needed to stab Williams in order to defend himself. (*People v. Gutierrez* (2003) 112 Cal.App.4th 704, 708.) To obtain a better result at trial, Haney's counsel would have needed to establish a reasonable doubt as to whether Haney intended to kill Williams, or whether he acted in perfect self-defense—in other words, that he *reasonably* believed he needed to stab Williams in order to defend himself. (*People v. Randle* (2005) 35 Cal.4th 987, 994, overruled on another ground by *People v. Chun* (2009) 45 Cal.4th 1172, 1201.) Even if Haney's counsel had taken the actions Haney argues he should have, there is no reasonable probability that the jury would have found that Haney acted without an intent to kill, or in perfect self-defense. We address each of Haney's contentions in detail below.

(a) Haney contends that his trial counsel rendered ineffective assistance by failing to question a defense witness, Carlos Bush, regarding Bush's previous statements to Haney's investigator. According to Haney, Bush had told the investigator that he saw Williams raise his hand just before Haney stabbed him, and that Williams had admitted to attacking Haney outside the housing facility. At trial, Bush testified that he had not been paying attention to the scene until he saw Haney lunge at Williams. If it was error not to question Bush about his previous statements, there is no reasonable probability that it affected the outcome of the trial. Questioning Bush regarding his earlier statements could not have contradicted the surveillance video footage, which showed that Haney was the aggressor when he stabbed Williams.

(b) Haney alleges that his counsel provided ineffective assistance by failing to question Detective Illig, the primary police witness for the prosecution, regarding statements that other witnesses had made to Illig. According to Haney, witnesses had told Illig that Williams initially attacked Haney, and that Williams, rather than Haney, had been selling drugs prior to the altercation between the two. Haney contends that these statements would have shown that Illig was biased in his

investigation, ignoring evidence that was favorable to Haney. This line of questioning could not be reasonably expected to have made a difference in the outcome of Haney's case. Even if the first altercation began with Williams attacking Haney, that altercation ended several minutes before Haney stabbed Williams. Proving that Illig was biased in his investigation would not have contradicted the contents of the surveillance video, nor the statements Haney made after the attack.

(c) Haney contends that he received ineffective assistance of counsel because his attorney refused to question Williams regarding whether Williams would receive compensation if his testimony assisted the prosecution in obtaining a conviction. There is no reasonable probability that this questioning would have led to Haney's acquittal for attempted voluntary manslaughter. Even if the jury believed Haney's version of the events prior to the stabbing rather than Williams's, this would not have shown that Haney acted reasonably in self-defense when he stabbed Williams.

(d) Haney contends that his trial counsel provided him with ineffective assistance by failing to raise the issue of Williams's use of illegal drugs and psychiatric medications. According to Haney, this information might have caused the jury to find Williams less credible. In fact, Haney's counsel did cross-examine Williams regarding his use of alcohol, marijuana, and psychiatric drugs. Furthermore, as described above, Williams's credibility was not a key issue at trial, and any evidence concerning Williams's drug use would not have contradicted the surveillance video footage, nor Haney's own statements regarding his actions.

(e) Haney contends that his trial counsel provided him with ineffective assistance by failing to attempt to impeach a witness to the stabbing, Steven Early, by asking him about his alcohol use prior to the attack, and by failing to ask the doctor who treated Williams about Williams's own history of mental health issues. Early testified that he "really couldn't see nothing" of the beginning of the fight between Haney and Williams. Impeaching him would have made very little difference to the prosecution's case against Haney. Haney also theorizes that Williams may have been suicidal and attacked Haney in the hope that Haney would kill him. This theory would have been

irrelevant, in light of the evidence showing that Haney waited a few minutes after that first attack had ended, approached Williams, and stabbed him in the neck.

(5) Finally, Haney contends that his appellate attorney provided ineffective assistance of counsel by filing a *Wende* brief and refusing to raise any issues on appeal, by erroneously describing the length of Haney's sentence, and by failing to send Haney a copy of a corrected abstract of judgment. We find no merit in Haney's contentions. As we have stated above, we have reviewed the record of the case in full and found no issues appropriate for argument on appeal. When an attorney whom the court has appointed to represent an indigent defendant on appeal cannot find any issues that a reasonable attorney would believe could result in relief for her client, it is her duty to file a *Wende* brief requesting that the court review the record independently. (See *People v. Kelly, supra*, 40 Cal.4th at pp. 117-119.) Nor did Haney's appellate counsel err by telling him that his sentence had been doubled due to his prior strike. The record indicates that the trial court sentenced Haney on count one to 11 years imprisonment for attempted voluntary manslaughter, which was double the high term of five and one half years. Finally, appellate counsel did not provide ineffective assistance with respect to the abstract of judgment. The initial abstract of judgment stated that Haney had been convicted of attempted murder, when in fact the jury found him guilty of attempted voluntary manslaughter. The trial court has filed with this court a copy of the amended abstract of judgment, which corrected this error.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.