

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(Butte)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL PAUL KELLEHER,

Defendant and Appellant.

C068786

(Super. Ct. No.  
CM032806)

Defendant Michael Paul Kelleher was charged by a complaint deemed an information with corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a))<sup>1</sup> with a prior conviction for the same offense in 2005, and a prior prison term enhancement pursuant to section 667.5, subdivision (b).

---

<sup>1</sup> Further undesignated section references are to the Penal Code.

Defendant pled guilty to the charged offense and the prior conviction on the understanding the prior prison term enhancement would be dismissed.

According to the probation report, which was the stipulated factual basis for defendant's plea, on the evening of September 30, 2010, defendant and his female cohabitant argued at home, and he struck her in the left eye, causing swelling. He was previously convicted of the same offense in 2005.

The trial court denied probation and sentenced defendant to four years in state prison, with 22 days of presentence custody credits (11 days actual credits and 11 days conduct credits). The court imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a suspended \$200 restitution fine (§ 1202.45), restitution to the State Board of Control for Restitution in the amount of \$200 (§ 1202.4, subd. (f)), a court security fee of \$40 (§ 1465.8), and a \$30 conviction assessment (Gov. Code, § 70373). The court reserved jurisdiction as to victim restitution.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no

arguable error that would result in a disposition more favorable to defendant.

We note, however, that the abstract of judgment contains an error that must be corrected. The abstract of judgment indicates defendant was convicted by the court. The defendant was convicted by plea.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to prepare a corrected abstract of judgment and forward a certified copy thereof to the Department of Corrections and Rehabilitation.

\_\_\_\_\_  
NICHOLSON, Acting P. J.

We concur:

\_\_\_\_\_  
BUTZ, J.

\_\_\_\_\_  
DUARTE, J.