Filed 7/31/12 P. v. Colon CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. JORGE LUIS COLON, Defendant and Appellant.	C069696 (Super. Ct. No. 11F04440)

An information accused defendant Jorge Luis Colon of inflicting corporal injury on a cohabitant (count one; Pen. Code, § 273.5, subd. (a));[1] assault with a deadly weapon, a baseball bat (count two; § 245, subd. (a)(1)); assault with a deadly weapon, scissors (count three; § 245, subd. (a)(1)); and making criminal threats (count four; § 422).

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[1] Further undesignated section references are to the Penal Code.

At trial, Maria L. testified that on the night of June 18, 2011, defendant beat her (his cohabitant at the time) with his fists, a pot, a wooden mop, a metal baseball bat, and a metal tube or pipe, and stabbed her in the arm with a pair of scissors. Maria L.'s 14-year-old daughter, who lived in the same house, testified that she heard her mother repeatedly tell defendant to stop hitting her, then saw defendant hitting her with his fists and a metal pole. An investigating officer, searching defendant's bedroom after the crime was reported, found scissors hidden where Maria L. said she had put them after getting them away from defendant, but did not find a baseball bat or a metal pipe in the residence.

The jury convicted defendant as charged on counts one and three, but convicted him only of the lesser included offense of simple assault (§ 240) on count two, and acquitted him on count four.

The trial court sentenced defendant to a total state prison term of five years (four years, the upper term, on count one, plus one year, one-third the midterm of three years, on count three). The court awarded defendant 178 days of presentence custody credit (89 actual days and 89 conduct days). The trial court imposed a county jail term of 100 days with full credit for time served on count two, the misdemeanor.

As to counts one and three, the court imposed a $1,000 restitution fine (§ 1202.4, subd. (b)) and a $1,000 suspended restitution fine (§ 1202.45), a $1,080 restitution fine payable to the Victims of Violent Crime Program (§ 1202.4), an $80 court

security fee (§ 1465.8, subd. (a)(1)), a $60 court facility fee (Gov. Code, § 70373), a main jail booking fee of $287.78 and a main jail classification fee of $59.23 (Gov. Code, § 29550.2). As to count two, the court imposed an additional $100 restitution fine (§ 1202.4, subd. (b)), an additional $40 court security fee (§ 1465.8, subd. (a)(1)), and an additional $30 court facility fee (Gov. Code, § 70373).

The trial court also reinstated, then terminated, defendant's probation for a prior felony conviction for assault with a deadly weapon. According to the probation report, in the prior case defendant beat the victim with his fists and a curtain rod.

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.

However, we have detected two problems that require remand. First, defendant was not entitled to one-for-one custody credit under section 4019 because both his present offense and his prior felony involved the personal use of a dangerous or deadly

weapon. (§ 1192.7, subd. (c)(23).) Second, the abstract of judgment fails to mention the fines and fees imposed by the trial court as to count two and does not state the statute under which the court facility fee was imposed as to counts one and three. Therefore, the matter must be remanded for recalculation of defendant's custody credits and for correction of the abstract of judgment.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to recalculate defendant's custody credits, prepare a corrected abstract of judgment as described above, and forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

NICHOLSON, Acting P. J.

We concur:

BUTZ, J.

MAURO, J.