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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRELL JOSEPH MARCHETTI,

Defendant and Appellant.

C070143

(Super. Ct. No. 11F03559)

Counsel for defendant Darrell Joseph Marchetti has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal.¹ (*People v. Wende* (1979) 25 Cal.3d 436.) We find no error and affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.)

¹ 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.

Defendant and Paula Patterson lived together in a motor home. On the night of May 15, 2011, after Patterson went to bed, defendant used a knife to cut through the bamboo door that hung in front of the bedroom. Patterson opened the door to investigate and was confronted by defendant holding a knife. She pushed defendant toward the kitchen and onto the floor, grabbed the knife and threw it in the sink.

As Patterson looked around for something to protect herself with, defendant grabbed a large glass bottle from under the table and struck her two or three times in the stomach. When Patterson doubled over in pain, defendant used the bottle to strike her twice on the chin. The force of the blows broke her dentures and cut her mouth.

After the confrontation, Patterson went back to the bedroom. Still in pain, she went into the bathroom for awhile, and then tried to leave the motor home. As she left the bathroom, defendant threatened to kill her. When she reached the door to try to exit the motor home, he told her it was dangerous outside and she could not leave. Patterson again returned to the bedroom. Approximately 30 minutes later, defendant came in and lit on fire the blanket covering Patterson. Patterson was able to immediately extinguish the fire. Defendant also broke Patterson's cell phone.

The next morning, Patterson told defendant she was going to the food bank. After she got away from the motor home and defendant, she called the police from a pay phone. After speaking to Patterson, officers went to the motor home. As they arrested defendant, he made the spontaneous statement that he did not hit Patterson with a bottle.

Defendant was charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),² inflicting corporal injury on a cohabitant (§ 273.5, subd. (a)), making criminal threats (§ 422), false imprisonment (§ 236), and two misdemeanor counts of vandalism (§ 594, subd. (a)). It was also alleged, and defendant admitted, he had a prior

² Further undesignated statutory references are to the Penal Code.

strike conviction (§ 667, subds. (b) through (i)). The jury found him guilty of assault with a deadly weapon and inflicting corporal injury on a cohabitant and he was acquitted on the remaining charges.

Prior to sentencing, defendant filed a request for the trial court to dismiss his prior strike conviction pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and to reduce the offenses to misdemeanors pursuant to section 17, subdivision (b). The trial court denied those requests and sentenced defendant to six years, with custody credit for 236 actual days and 118 conduct days pursuant to section 4019. The trial court also ordered defendant to pay various fines and fees, including a \$200 restitution fine and a suspended \$200 parole revocation fine.

There is an error on the abstract of judgment in that it indicates defendant received credit for 263 actual days. The trial court is directed to correct the abstract of judgment to specify that defendant received 236 actual days of credit.

Defendant appeals.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to indicate defendant received 236 actual days of credit and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

NICHOLSON, J.

We concur:

RAYE, P. J.

DUARTE, J.