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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN DE DIOS ALVAREZ,

Defendant and Appellant.

C070226

(Super. Ct. No.
CRF113666)

Appointed counsel for defendant Juan de Dios Alvarez asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

Because the matter was resolved by plea, our statement of facts is taken from the probation officer's report. The victim,

a commercial truck driver, was approaching his maximum allowed hours for driving and pulled his truck to the side of a Woodland road. He parked next to a truck occupied by defendant, who was also a commercial driver.

Early the next morning, the sound of defendant's engine woke the victim. Defendant realized there was insufficient room to leave his parking space by driving forward, drove in reverse and collided with the passenger side of the victim's truck. After trying and failing to drive forward, defendant called the victim a derogatory name and yelled at him to move his truck. The victim tried to explain that he could not move his truck until it had compressed sufficient air to release his emergency brake.

Defendant again collided with the victim's truck and successfully left his parking space. When the victim got out of his truck to inspect the damage, defendant struck the victim's right eye with a closed fist. The victim fell to the ground and lost consciousness.

When the victim regained consciousness, defendant was kicking him repeatedly in the chest, legs, and back. The victim's pain was so extreme he was unable to defend himself. The assault continued until the victim crawled beneath his truck trailer.

Defendant drove away but made a U-turn and appeared to be aiming his truck at the victim, who again sought shelter beneath the trailer. When defendant again left the scene, the victim walked to a gas station and called police.

Defendant pleaded no contest to battery with serious bodily injury. (Pen. Code, § 243, subd. (d).)¹ He entered the plea with the understanding that he would receive no prison time at the outset. In exchange for the plea, additional counts were dismissed with a *Harvey*² waiver for restitution.

After reviewing the probation report, however, the trial court rejected the plea agreement, indicating that a prison term seemed appropriate under the circumstances of the case. The People offered defendant the low base term in prison. Defendant accepted the offer and reaffirmed his plea.

The trial court sentenced defendant to two years in prison, awarded him 196 days of presentence custody credit (98 actual and 98 conduct), and ordered him to pay a \$200 restitution fine (§ 1202.4), a \$200 restitution fine suspended unless parole is revoked (§ 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)), and a \$30 court facilities assessment (Gov. Code, § 70373).

II

Appointed counsel filed an opening brief that set forth the facts of the case and asked this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the

¹ Undesignated statutory references are to the Penal Code.

² *People v. Harvey* (1979) 25 Cal.3d 754.

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.

DISPOSITION

The judgment is affirmed.

_____ MAURO _____, J.

We concur:

_____ NICHOLSON _____, Acting P. J.

_____ BUTZ _____, J.