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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS SEAN CARRILLO,

Defendant and Appellant.

C070694

(Super. Ct. No. CR52739)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436.¹ Having reviewed the record as required by *Wende*, we affirm the judgment.

¹ Counsel 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. (*People v. Wende, supra*, 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 have elapsed, and we have received no communication from defendant.

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, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2011, three men were "hanging" out in a garage when defendant Nicholas Sean Carrillo kicked open the door and burst into the garage yelling "Norte, Norte, Norte." Defendant was wearing a red belt with a chrome buckle and a red and black hat, both inscribed with the letter "N." Defendant lunged at one of the men and, swinging a knife, slashed his leg. The men wrestled the knife from defendant and pinned him to the ground. The police were called and arrived on the scene. Defendant was combative with the responding officer and was taken into custody. During a later interview, defendant said he had gone after the men because they hit "one of my boys" with a baseball bat. The men, however, denied any gang involvement. Defendant was intoxicated at the time of the offense.

Defendant was charged with assault with a deadly weapon and burglary (Pen. Code, §§ 245, subd. (a)(1), 459),² both carrying enhancements for personal infliction of great bodily injury and commission of the offense for the benefit of a street gang (§§ 12022.7, subd. (a), 186.22, subd. (b)(1)(C)), and with street terrorism (§ 186.22, subd. (a)).

² Undesignated statutory references are to the Penal Code.

Defendant pled guilty to assault with a deadly weapon and admitted the great bodily injury enhancement. In exchange for his plea, the remaining charges were dismissed. Defendant agreed to waive presentence custody credits as a condition of being permitted to seek admittance into and attend a rehabilitation program.

On July 20, 2011, the trial court continued sentencing and released defendant on his own recognizance so he could participate in a one-year rehabilitation program with the Salvation Army. Defendant was terminated from the program on December 20, 2011 and was incarcerated while he waited for permission to reenter the program. He was readmitted into the program on January 30, 2012.

Defendant was terminated from the Salvation Army program for a second time on March 2, 2012. The trial court denied defendant probation and sentenced him to state prison for the midterm of three years for the assault and a consecutive three years for the enhancement, for an aggregate term of six years. Having previously waived credit for the time he spent in custody awaiting entry into the program, defendant was awarded 17 days of credit for the time between his release from the rehabilitation program the second time and the date of sentencing. (CT 104, 107; RT 109) The trial court ordered defendant to pay a \$1,200 restitution fine, a \$1,200 suspended parole revocation fine, and \$2,320 in victim restitution.

Defendant appeals. He did not obtain a certificate of probable cause.

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.

_____ MURRAY _____, J.

We concur:

_____ BUTZ _____, Acting P. J.

_____ DUARTE _____, J.