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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Trinity)**

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMIAH DAVID FANNAN,

Defendant and Appellant.

C070904

(Super. Ct. No. 10F0127A)

Appointed counsel for defendant Jeremiah David Fannan 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 shall 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, 124.)

Defendant pleaded no contest to assault with force likely to cause great bodily injury, kidnapping during a carjacking, and reckless driving. As to the assault charge he also admitted the enhancement allegation that he inflicted great bodily injury on the victim. The trial court sentenced defendant to an aggregate term of seven years eight months, plus a consecutive term of life in state prison. Because this matter was resolved by plea the facts are taken from the preliminary hearing transcript, as that served as the stipulated factual basis of the plea.

Defendant met Sam Jungwirth at the Whiskeytown Visitor Center in August 2010. Jungwirth agreed to give Fannan a ride to Lewiston. Defendant directed Jungwirth to a remote location and then hit Jungwirth multiple times on his head and face. Defendant ordered Jungwirth to move to the passenger's seat and Fannan moved to the driver's seat, locked the doors and began driving back toward Redding. He demanded Jungwirth's wallet and took him to an ATM to withdraw cash. Defendant also told Jungwirth not to report his truck as stolen for at least a week. Defendant threatened Jungwirth and his family's safety if he did not comply with defendant's demands. When they got to the bank, Jungwirth yelled for someone to call 911.

Law enforcement issued an alert for the stolen truck. A few hours later, officers saw defendant driving Jungwirth's truck recklessly on the highway. Officers attempted to pull the truck over and defendant fled in the truck, reaching speeds of approximately 80 miles per hour and skidding into the opposing lane. Later officers found the stolen truck, unoccupied and a K-9 officer found defendant in the woods near the truck.

As a result of being hit by defendant, Jungwirth had a black eye, multiple contusions, and required stitches to his forehead and ear.

Defendant made five *Marsden*¹ motions which the trial court denied. The trial court granted defendant's sixth *Marsden* motion based on an irreconcilable conflict between defendant and counsel, and appointed substitute counsel. The trial court later relieved substitute counsel due to health issues and appointed new counsel.

Defendant filed a motion to dismiss based on a violation of his right to a speedy trial. The trial court denied the motion. Defendant also filed a motion to dismiss in the interests of justice. (Pen. Code, § 1385.)² The trial court denied the motion.

Defendant pleaded no contest to assault with force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1)), kidnapping during a carjacking (*id.*, § 209.5, subd. (a)), and reckless driving (Veh. Code, § 2800.2, subd. (a)). As to the assault charge he also admitted the enhancement allegation that he inflicted great bodily injury on the victim. (Pen. Code, § 12022.7, subd. (a).) In exchange for the plea, numerous charges were dismissed. In accordance with the plea agreement, the court sentenced defendant to an aggregate term of seven years eight months, plus a consecutive term of life in state prison. The trial court ordered defendant to pay a \$3,000 restitution fund fine (*id.*, § 1202.4, subd. (b)), a \$3,000 suspended restitution fine unless parole is revoked (*id.*, § 1202.45), and awarded defendant 693 days of presentence custody credit (*id.*, § 2933.1).

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

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and, pursuant to *Wende, supra*, 25 Cal.3d 436,

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

² Undesignated statutory references are to the Penal Code in effect at the time of defendant's crimes.

requesting the court to review the record and determine whether there are any arguable issues on appeal. 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.

Defendant has filed a supplemental brief contending he was denied his right to a speedy trial; received ineffective assistance of trial counsel Erin McNally as a result of her failure to file a peremptory challenge under Code of Civil Procedure section 170.6, a change of venue motion, a motion to recuse the district attorney's office, and a claimed conflict of interest based on her prior representation of him in another case; and, received ineffective assistance of trial counsel John Webster in that Webster advised defendant his speedy trial rights would be preserved for appeal. Defendant also complains the trial court erred in relieving Frank O'Connor as counsel and denying defendant's motion to dismiss. Lastly, he contends he received ineffective assistance of appellate counsel by virtue of counsel filing a *Wende* brief on appeal.

With the exception of the claims as to appellate counsel, the claims raised by defendant in his supplemental brief each arose prior to his plea and effectively challenge the validity of his plea. Accordingly, they are not reviewable in the absence of a certificate of probable cause. (*People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

As to the claim that appellate counsel was ineffective for filing a *Wende* brief, this claim is without merit. An indigent defendant has the right to effective assistance of counsel on appeal. (*In re Spears* (1984) 157 Cal.App.3d 1203, 1210.) Appellate counsel has the duty to prepare a brief, containing citations to the appellate record and appropriate authority, setting forth all arguable issues—that is, those issues which have a reasonable argument supporting prejudicial error justifying reversal or modification of the judgment. (*Ibid.*; *People v. Feggans* (1967) 67 Cal.2d 444, 447.) Failure of “appellate counsel to raise crucial assignments of error, which arguably might have resulted in a reversal” deprives an appellant of effective assistance of appellate counsel. (*In re Smith* (1970)

3 Cal.3d 192, 202-203.) However, the fact that appellate counsel followed the procedure set forth in *Wende* is insufficient, by itself, to show appellate counsel has been ineffective. Accordingly, defendant has failed to meet his burden of proof on the issue of ineffective assistance of appellate counsel. This is particularly so where, as here, we have undertaken an examination of the entire record pursuant to *Wende*, and we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

RAYE, P. J.

DUARTE, J.