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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY DE DERRYBERRY,

Defendant and Appellant.

C070972

(Super. Ct. No. CRF11486)

Appointed counsel for defendant Danny De Derryberry 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, the facts are taken from the probation officer's report. Following a 20-year marriage, defendant separated from his wife. The wife obtained a criminal protective no-contact order against defendant.

During the next two months, defendant nonetheless contacted his wife on many occasions. On one occasion she reported the violation to the sheriff's department.

When the wife subsequently arrived at a restaurant for lunch, an unfamiliar car parked behind her truck. Defendant got out of the car and approached her. She reminded him of the protective order and said she did not want to talk to him. Defendant gave his wife some clothes for their son. She told defendant to leave her alone and she drove away. When the wife stopped at a turnout, defendant parked in front of her truck and approached her on foot. He opened her car door, got down on one knee, told her he loved her, and begged her to take him back. She smelled alcohol on his breath. She told him their relationship was over and she had filed for divorce. He cried and pleaded with her, and she reminded him of the protective order.

Defendant told his wife he wanted to hug and hold her. When she refused, his demeanor immediately changed from apologetic to very angry. He reached into the truck, grabbed her by her arms, struggled to get on top of her, and said, "you know you want this, let's fuck just one last time." The wife fought back. Defendant grabbed her pants and pulled her left pant leg all the way off. He pulled down his swimming trunks, exposing his penis.

Defendant groped his wife's legs, inner thighs and buttocks. The wife clung to the steering wheel and pleaded for him to stop. Defendant repeatedly forced his fingers into her vagina and rectum.

When he stopped the attack, defendant took his wife's camera and cellular telephone from the center console, physically got off of her and left the truck. The wife drove to her place of employment and telephoned the sheriff's department. Later, she

was taken to a hospital for a sexual assault examination that revealed bruising, tearing of the rectum, and trauma to the vagina.

Defendant reported the incident to the sheriff's department, claiming he had been the victim of a domestic violence incident. He claimed his wife hit him with a tire iron.

Defendant subsequently pleaded no contest to stalking (Pen. Code, § 646.9, subd. (b) -- count 4),¹ infliction of corporal injury on a spouse (§ 273.5, subd. (a) -- count 5), and second degree robbery (§§ 211, 212.5, subd. (c) -- count 6), in exchange for the dismissal with a *Harvey* waiver² of six related counts and a probation violation in an unrelated case.

The trial court sentenced defendant to five years in state prison, awarded him 169 days of custody credit and 25 days of conduct credit, ordered him to pay victim restitution in the amount of \$150 plus collection fees and interest, and ordered him to pay a \$1,680 restitution fine (§ 1202.4), a \$1,680 parole revocation fine suspended unless parole is revoked (§ 1202.45), a \$40 theft crime fine (§ 1202.5), a \$120 court operations fee (§ 1465.8, subd. (a)(1)), and a \$90 court facilities assessment (Gov. Code, § 70373).

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking 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 date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

¹ Undesignated statutory references are to the Penal Code.

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

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:

BLEASE, Acting P. J.

HULL, J.