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

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRELL TRAVIS BROWN,

Defendant and Appellant.

C074770

(Super. Ct. No. 11F08408)

Following jury deadlock and declaration of a mistrial, a second jury found defendant Tyrell Travis Brown guilty of battery upon a nonprisoner (Pen. Code, § 4501.5)¹ and found that he had a prior serious felony conviction (§§ 667, subs. (b)-(i), 1170.12) and had served a prior prison term. (§ 667.5, subd. (b).) The jury found defendant not guilty of battery by gassing upon a state prison employee. (§ 4501.1.)

Defendant was sentenced to prison for four years (twice the low term) consecutive to the term he was then serving. The prior prison term enhancement was stricken in the

¹ Further statutory references are to the Penal Code unless otherwise indicated.

interest of justice. Defendant was awarded no presentence credits and was ordered to pay an \$800 restitution fine (§ 1202.4), an \$800 restitution fine suspended unless parole is revoked (§ 1202.45), a \$40 court operations fee (§ 1465.8, subd. (a)(1)), and a \$30 court facilities assessment. (Gov. Code, § 70373.)

FACTS

On Saturday, September 10, 2011, Correctional Officer Rolfe Dixon was working as a floor officer in the A facility at California State Prison Sacramento. Dixon's duties included delivering supplies including toilet paper, tooth powder, writing paper, and other materials to inmates in their cells. Dixon asked defendant if he needed supplies. Defendant, who was kneeling down at the food port in the door of his cell, said that he did. Dixon handed defendant toilet paper and then writing paper.

As Officer Dixon turned to hand defendant the supplies, he heard a spitting noise and then felt fluid along his left arm. Defendant said nothing to Dixon. Dixon then followed the prison protocol when bodily fluids are put onto the person of an officer. A nurse collected a sample of the fluid, and Dixon booked it into an evidence locker.

Prior to the incident, Officer Dixon had worked in the A facility for four to five months and had not had any trouble with defendant.

On the day of the incident, Correctional Officer Jesse McCowan was working as a search and escort officer in the A facility of the prison. McCowan photographed Officer Dixon after the incident.

Criminalist Matthew Nakayama worked for the Sacramento County District Attorney's Office Laboratory of Forensic Services. In March 2012 he tested a piece of gauze for the presence of saliva. He concluded that the gauze was presumptive positive for saliva.

Sacramento County Deputy District Attorney Chris Carlson testified regarding defendant's prior convictions.

Prior to trial, the trial court granted defendant's request to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 [45 L.Ed.2d 562]. The defense rested without presenting evidence or testimony.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 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 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.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

MURRAY, J.