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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP MICHAEL GOMEZ,

Defendant and Appellant.

C077445

(Super. Ct. No. CRF14372)

Appointed counsel for defendant Phillip Michael Gomez asked this court to review the record and 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

The factual background is taken from preliminary hearing testimony which, pursuant to stipulation, provided the factual basis for defendant's plea.

Stacey K. and defendant were married for six years and had four children. During an argument in June 2014, defendant grabbed Stacey K. by her hair, dragged her around the room, and punched her in the face. Stacey K. left the apartment with her children.

A neighbor offered to watch the children and gave Stacey K. a red bra to wear. Stacey K. went for a long walk. When Stacey K. returned to her apartment to get her keys, defendant accused her of cheating on him. Defendant is a Sureno gang member, and when he saw the red bra he became angry because the color red is associated with a rival gang. He ripped her shirt off. Defendant again grabbed Stacey K. by her hair, dragged her into the bedroom, threw her on the bed, and began punching her in the face and on her body. Stacey K. hit defendant on the forehead with a glass figure of the Virgin Mary and tried to hit him with a mirror. During the fight, defendant told Stacey K. it was over for her. He put his hand inside her pants and his fingers in her vagina to see if she was wet. At some point, while Stacey K. managed to pin defendant on the ground in the hallway, her neighbor busted in Stacey K.'s door and yelled at defendant. Defendant pulled Stacey K.'s pants down. Stacey K. ran from the apartment and asked a neighbor to call police. Stacey K. had a laceration on her chest and bruises on her face, neck, head, ear, jaw, hand, forearm, and back.

Defendant pleaded guilty to forcible sexual penetration (Pen. Code, § 289, subd. (a)(1)(A) -- count 1)¹ and making a criminal threat (§ 422 -- count 3). Defendant also admitted a prior strike conviction. The trial court sentenced defendant to 12 years four months in state prison, dismissed the remaining counts, awarded defendant 79 days of presentence custody credit, and ordered defendant to pay various fines, fees, penalties and assessments.

The trial court denied defendant's request for a certificate of probable cause.

¹ Undesignated statutory references are to the Penal Code.

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.

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:

ROBIE, Acting P. J.

HOCH, J.