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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIE AVARCA GOMEZ,

Defendant and Appellant.

C079674

(Super. Ct. No. CR-F-14-0200)

Appointed counsel for defendant Louie Avarca Gomez has filed an opening brief that sets forth the procedural history of the case¹ and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979))

¹ Counsel failed to include the required summary of the *facts* of this case and instead referred us to the transcripts of the preliminary hearing. This is unacceptable. Counsel was required to provide a summary of the facts with citations to the record. (Cal. Rules of Court, rules 8.204(a)(1)(C), 8.360(a).)

25 Cal.3d 436 (*Wende*.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

BACKGROUND

In the early morning of January 9, 2014, defendant confronted his girlfriend (now his wife), Christi M., about their relationship. Christi had a three-year-old son with defendant and was pregnant with defendant's unborn baby at the time. Defendant began throwing things, which woke their son. Defendant then began punching Christi on the head and pulling her hair, knocking her to the ground. Their son exclaimed: "Don't hurt my mom" and Christi put herself between defendant and their son to protect the boy. Defendant then picked up a toy and threw it at her and their son, hitting Christi on the forehead.

Christi tried to call the police but defendant hung up the phone and threatened to kill himself and her if she called the police. Defendant struck her in the leg and stomach with a large stick, announcing he did not want the unborn baby. He also knocked down the bookshelves and threw a cold cup of coffee, which hit the bed and the child. He then left the room and retrieved a .22-caliber revolver from the gun safe. He returned to the bedroom with the revolver in his hands and told her he would find and kill her if she called the police. Finally, defendant left the residence.

Defendant was located the following day at a Woodland motel. Inside defendant's car (in the driver's side door handle), officers found two live rounds of .22-caliber ammunition and a bindle of methamphetamine.

Defendant was charged in the instant case (No. 14-0200) with 11 counts as follows: (1) infliction of corporal injury on a cohabitant resulting in a traumatic condition (Pen. Code, § 273.5, subd. (a));² (2) threats (§ 422); (3) dissuading a witness

² Further undesignated statutory references are to the Penal Code.

(§ 136.1, subd. (c)(1)); (4) infliction of corporal injury on a cohabitant resulting in a traumatic condition (§ 273.5, subd. (a)); (5) threats and being armed with a firearm in the commission of the crime (§§ 422, 12022, subd. (a)(1); (6) dissuading a witness and being armed with a firearm in the commission of the crime (§§ 136.1, subd. (c)(1), 12022, subd. (a)(1)); (7) felon in possession of a firearm (§ 29800, subd. (a)(1)); (8) abusing or endangering the health of a child (§ 273a, subd. (b)); (9) possession of ammunition by a prohibited person (§ 12316, subd. (b)(1)); (10) possession of a controlled substance (§ 11377, subd. (a)); and (11) contempt of court by contacting persons protected by court order (§ 116, subd. (c)(1)). It was further alleged that defendant had been previously convicted of a serious felony within the meaning of section 667, subdivisions (c) and (e)(1).

On March 27, 2015, defendant pled no contest to counts 1, 7, and 9 and admitted the prior serious felony enhancement. In exchange for his plea, the parties agreed the remaining counts would be dismissed and he would receive a stipulated six year eight month state prison sentence.

Sentencing was set for May 8, 2015. Defendant remained released on bail until sentencing and entered into a *Cruz* waiver (*People v. Cruz* (1988) 44 Cal.3d 1247) pursuant to which he agreed that if he violated the law prior to sentencing, the stipulated sentence would be set aside and he would be sentenced at the court's discretion, including up to the "maximum" term.

Defendant was arrested on April 9, 2015, and charged in a new case (No. 15-2173) with new offenses including first degree burglary, robbery, threats to commit a crime resulting in death or great bodily injury, and assault with a deadly weapon.

Sentencing took place on May 7, 2015. At the sentencing hearing, defendant admitted he had violated the terms of his *Cruz* waiver. In exchange for dismissal of case No. 15-2173, and an agreement that the prosecutor would not file a third pending case, defendant agreed to a new stipulated sentence of eight years eight months in state prison.

The trial court imposed sentence in accordance with the agreement. It also imposed various fines and fees, including a \$300 restitution fine and a \$300 suspended parole revocation fine.³ (§§ 1202.4, subd. (b), 1202.45.) Defendant's custody credits were subsequently calculated and awarded as 125 actual days and 124 conduct days, for a total of 249 days.

Defendant timely appealed. His request for a certificate of probable cause was granted. (§ 1237.5.)

DISCUSSION

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 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.

³ Although the trial court orally imposed the \$300 restitution fine for “each felony conviction,” because the abstract of judgment correctly records only one \$300 fine for the entire case (consisting of three felony counts of conviction), we assume the trial court meant to impose only one total restitution fine and we need not modify the judgment. Although the number of counts of conviction as well as the number of years to which a defendant is sentenced may be considered in determining the amount of the restitution fine (see section 1202.4, subd. (b)(2)), only one total fine per case should be imposed pursuant to section 1204, subdivision (b).

