Filed 6/25/19 P. v. Osegeda CA3

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE, Plaintiff and Respondent, v. JUAN MARTIN OSEGEDA, Defendant and Appellant.	C087777 (Super. Ct. No. 17CF06061)

Appointed counsel for defendant Juan Martin Osegeda filed an opening brief setting forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

In September 2017, defendant and Miranda G. were in a dating relationship; they had one child together. Miranda had a criminal protective restraining order against defendant, though she allowed defendant to live with her because she thought he would change.

On September 30, 2017, defendant pushed Miranda into a coffee maker after she slammed the bedroom door. Miranda took their child and left the house. When they returned later that afternoon, defendant was drunk and verbally abusive. Miranda called her mother, who came and picked up Miranda and the child. They returned home later that evening. Defendant was still angry and abusive. Uncomfortable being alone with defendant, Miranda again called her mother. This time, however, Miranda asked her mother to stay with them.

Later that evening Miranda caught defendant trying to pour antifreeze into her car's gas tank. Defendant threw the bottle of antifreeze at Miranda and then punched her three times in the face. He grabbed her by her hair, pulled her head down, and kneed her in the face. Miranda broke free and went back into the house where her mother called 911. Defendant fled in his vehicle.

The People subsequently charged defendant with felony domestic violence (Pen. Code, § 273.5, subd. (a)),[1] felony vandalism (§ 594, subd. (a)), and misdemeanor violation of a protective order (§ 273.6, subd. (a)). The People alleged defendant served two prior prison terms under section 667.5, subdivision (b).

---

[1] Undesignated statutory references are to the Penal Code.

Defendant pleaded guilty to domestic violence and violation of a protective order. In exchange for his plea, the People moved to dismiss the remaining charges and allegations in this matter along with pending Butte County Superior Court case Nos. 17CM02704 and 17CF06061. The court granted the People's motion with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. The court also terminated, as unsuccessful, defendant's probation in Butte County Superior Court case No. 17CM00351.

At sentencing, defendant asked for probation. The trial court denied his request and, finding no mitigating factors to outweigh those in aggravation, the court sentenced defendant to the upper term of four years in state prison. The court imposed fines and fees including the minimum $300 restitution fine (§ 1202.4), the minimum $300 parole revocation fine (§ 1202.45), an aggregate $80 court security fee (§ 1465.8), and an aggregate $60 conviction assessment (Gov. Code, § 70373). The court also imposed a $250 domestic violence program fee pursuant to section 1463.27.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date the People filed their opening brief. Defendant filed a letter with this court in which he indicates he is sorry for his conduct and asks this court for "a lighter sentence" so that he may be a father to his child. Defendant does not, however, claim any error.

We examined the entire record and found no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
BLEASE, Acting P. J.

We concur:

/s/
ROBIE, J.

/s/
DUARTE, J.