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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY MICHAEL LONG et al.,

Defendants and Appellants.

D060405

(Super. Ct. No. SCE299206)

APPEALS from judgments of the Superior Court of San Diego County, John M. Thompson, Judge. Affirmed.

Anthony Michael Long, Jesse James Preston and Bryant Stephan Johnson (the defendants) entered negotiated guilty pleas to mayhem (Pen. Code, § 203; count 2, victim Michael Bajko; all statutory references are to the Penal Code) and five counts of assault with a deadly weapon by force likely to cause great bodily injury (§ 245, subd. (a)(1); count 3, victim Bajko; counts 5 and 7, victim Eric Taylor; counts 6 and 8, victim Scott McPhail). The court sentenced Long and Preston to eight years in prison: the eight-year

upper term for mayhem, four concurrent three-year middle terms for assault and a stayed term (§ 654) for the assault in count 3. The court sentenced Johnson to 11 years in prison: the eight-year upper term for mayhem; three consecutive one-year terms (one-third the middle term) for the assaults in counts 5, 6 and 7; a concurrent three-year middle term for the assault in count 8; and a stayed term (§ 654) for the assault in count 3. The defendants appeal. We affirm.

BACKGROUND

On the evening of March 5, 2010, Johnson and Taylor argued and threatened each other, largely through intermediary Amanda Porter. Taylor called Johnson a derogatory name, and Johnson challenged Taylor to a fight. They agreed to meet at a park.

Taylor, McPhail and Bajko drove to the park and arrived early in the morning of March 6, 2010. They did not have any weapons, although there was a tire iron in the back of their car. About five minutes later, the defendants arrived in vehicles driven by Porter and another person. Long had a bat and either Johnson or Preston had a club or bat. The defendants ran toward Taylor and McPhail. Long swung at McPhail. Taylor and McPhail ran. A chase ensued.

Taylor and McPhail stopped running when they realized they were no longer being pursued. Meanwhile, Bajko, with his hands in the air, was under attack. The defendants were striking him with a bat and a golf club, swinging the weapons up over their heads and then straight down. Bajko fell to the ground and lay there, limp, with his hands at his sides, as the defendants repeatedly struck him in the face, head and chest with the bat,

kicked him in the side and struck him in the side with a weapon. Preston stomped on Bajko's head. Johnson stomped on Bajko's head, hard, at least five times.

Taylor ran to his car, grabbed the tire iron and ran to assist Bajko. Someone struck Taylor in the face with a bat. Taylor fell to the ground but got back up. As the bat came at him again, Taylor stumbled and fell. As he lay on the ground, another individual kicked him in the side and punched him. Taylor felt something strike his arm.

McPhail also came to Bajko's aid. McPhail punched one of Bajko's assailants in the back of the head as the assailant was holding a bat above Bajko's head, ready to strike him in the face again. Someone struck McPhail in the head with a golf club. McPhail fell to the ground, and someone kicked him in the face. McPhail stood up, and someone struck him in the ribs with a bat. McPhail again fell to the ground, where he saw the tire iron. He picked it up and put it behind his back. One of Bajko's assailants swung at McPhail with his fist. When McPhail brought the tire iron from behind his back, the assailant turned around and ran, stopped at Bajko and stomped on his face twice. McPhail hit someone in the head with the tire iron as that person was about to strike Taylor, who was lying on the ground.

The defendants left, and McPhail called 911. The police arrived at the park shortly before 2:00 a.m. on March 6, 2010, as paramedics were treating Bajko, Taylor and McPhail. Bajko was unconscious, his eyes were swollen shut and he was covered in blood. Taylor had a laceration on his forearm. McPhail complained of pain on the left side of his head and the left side of his torso. Officers found a tire iron and the broken shaft of a golf club near the victims.

The laceration on Taylor's forearm required five internal and five external sutures, and caused a scar. McPhail was treated for a concussion and bruised ribs. Bajko sustained life-threatening injuries, loss of brain tissue and memory loss. His injuries included multiple skull and facial fractures and lacerations. Bajko underwent several surgeries. He had titanium plates placed in his face and skull, resulting in scars and facial abnormalities. He required a tracheotomy, resulting in another scar, and had an artificial sinus implanted. His crushed teeth required extensive dental work. As a result of his injuries, Bajko was sensitive to light, could no longer taste or smell, could no longer play sports and suffered from headaches and high blood pressure.

Johnson admitted he "beat up the big one pretty bad." Johnson told Porter, who witnessed the attack, to lie to the police. Preston admitted he had "[cracked]" Bajko with a bat.

DISCUSSION

Appointed appellate counsel for the defendants have filed briefs summarizing the facts and proceedings below. Counsel present no arguments for reversal, but ask this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), Long's counsel lists as a possible, but not arguable, issue: whether the court erred in imposing the upper term; and Preston's counsel lists as a possible, but not arguable, issue: whether the court abused its discretion in imposing the upper term. Pursuant to *Anders*, Johnson's counsel lists as possible, but not arguable, issues: (1) whether the court abused its discretion in imposing the upper term with consecutive sentences for three of the assaults;

(2) whether the case should be remanded for resentencing due to the court's failure to state reasons for imposing consecutive sentences; and (3) whether the case should be remanded for resentencing due to the ineffective assistance of counsel at sentencing.

We granted the defendants permission to file briefs on their own behalf. They have not responded. A review of the record pursuant to *Wende* and *Anders*, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. The defendants have been competently represented by counsel in these appeals.

DISPOSITION

The judgments are affirmed.

McINTYRE, J.

WE CONCUR:

McDONALD, Acting P. J.

AARON, J.