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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER C. TUTOR,

Defendant and Appellant.

D070029

(Super. Ct. No. SCD232510)

APPEAL from a judgment of the Superior Court of San Diego County, Jay M.

Bloom, Judge. Affirmed.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In 2011, Christopher C. Tutor was charged with rape of an unconscious person (Pen. Code,<sup>1</sup> § 261, subd. (a)(4); count 1) and rape of an intoxicated person (§ 261, subd. (a)(3); count 2). As a result of plea negotiations, an amended complaint was filed

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

and Tutor was allowed to plead to one count of aggravated assault (§ 245, subd. (a)(1)) and one count of misdemeanor lewd conduct (§ 647, subd. (a)).

In 2012, Tutor was granted probation subject to certain conditions. Tutor successfully completed probation.

In 2016, Tutor brought a motion to reduce his conviction to a misdemeanor pursuant to section 17, subdivision (b). The motion was denied.

Tutor filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating she has been unable to identify any reasonably arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*. We offered Tutor the opportunity to file his own brief on appeal, but he has not responded.

#### STATEMENT OF FACTS

As this case arises from a postplea motion to reduce the sentence, we only have the facts of the guilty plea itself as background for this appeal. In his guilty plea form Tutor said he "committed an assault upon the person of another by means likely to produce great bodily injury & engaged in lewd conduct in a public place."

#### DISCUSSION

Appellate counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436. In that brief, counsel has identified several possible issues pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*):

1. Whether the trial court erred in declining to reduce Tutor's section 245, subdivision (a)(1) conviction to a misdemeanor pursuant to section 17, subdivision (b)(3); and

2. Whether the plea to section 245, subdivision (a)(1) was authorized since the statute was amended effective January 2012, to move this particular offense to subdivision (b)(4). (The offense in this case was committed in 2011.)

We have reviewed the entire record in accordance with *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738 and have not identified any reasonably arguable issue for reversal on appeal. Competent counsel has represented Tutor on this appeal.

#### DISPOSITION

The order denying the motion to reduce the section 245, subdivision (a)(1) offense to a misdemeanor is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

PRAGER, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.