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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EDWARD WIGGINS,

Defendant and Appellant.

E053555

(Super.Ct.No. SWF10000930)

OPINION

APPEAL from the Superior Court of Riverside County. Joe O. Littlejohn, Judge. (Retired judge of the San Diego Super. Ct., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lynne McGinnis and Felicity Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Steven Edward Wiggins guilty of two counts of assault with a deadly weapon, to wit, a knife (count 1) and a baseball bat (count 2). (Pen. Code, § 245, subd. (a)(1).)¹ In the commission of both counts, the jury also found true that defendant personally inflicted great bodily injury upon the victims. (§§ 12022.7, subd. (a), 1192.7, subd. (c).) Defendant was sentenced to a total term of five years in state prison with credit for time served. On appeal, defendant contends the trial court abused its discretion in violation of his constitutional right to due process when it sentenced him to prison instead of granting him probation. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND

Defendant and his girlfriend Debbie Ziello lived in a house in Riverside County with Ramon Perez, Tyrone Sanchez, David Fisher, Chris Donatee, and Derrick Tinsley. The house was an “independent living” house, and a step up from a “board and care” residence. Tinsley owned the house while Fisher managed it. Perez considered defendant and Ziello friends, but stated that he had sex with Ziello on numerous occasions. Defendant knew about Perez having a sexual relationship with Ziello.

On the evening of April 25, 2010, Perez, who was on the first floor of the house, heard defendant and Ziello arguing in their second floor bedroom. He also heard a loud crash come from the bedroom, as well as Ziello screaming. Ziello came downstairs and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

told Perez what had happened (that the two were arguing and defendant hit her). When defendant came downstairs approximately a minute later, Perez became extremely upset at defendant and began punching himself in the head with his hand in an attempt to encourage defendant to hit him. Perez told defendant to hit him, and not Ziello because she is a woman. Perez wanted defendant to hit him so he could hit defendant back. Perez eventually ran upstairs, went into Fisher's bedroom, and yelled at Fisher to call Tinsley.

Sanchez was in the bedroom he shared with Fisher and heard the argument between Perez and defendant. Sanchez went downstairs and persuaded Perez to return upstairs with him in order to stop the fight. Sanchez thereafter returned upstairs with Perez. Defendant also went upstairs and into his bedroom. Defendant and Perez, however, continued to argue. The argument became heated with Perez confronting defendant with "extreme uncontrollable rage and emotion" and yelling obscenities at defendant in an attempt to encourage defendant to hit him first.

Sanchez was standing next to defendant. Sanchez told defendant, "'You're going to go to jail for what you're doing.'" Defendant became angry, pulled out a knife from behind his back and stabbed Sanchez in the chest. Sanchez pushed defendant into his bedroom, and the two struggled on the bed. During the struggle, defendant stabbed Sanchez a second time in his left arm. Sanchez eventually broke free from the struggle and punched defendant in the face.

When Sanchez turned to run away, defendant attempted to stab him in the back. However, Fisher blocked the knife and knocked the knife out of defendant's hand. After kicking the knife out of the way, Fisher threw defendant down back into his bedroom and

told him to stay there. Defendant grabbed an aluminum baseball bat from underneath his bed and then attacked Fisher with the baseball bat. Defendant, with both hands over his head, swung the baseball bat down onto Fisher's head, and continued to beat him with the bat after Fisher fell to the floor face first. Fisher tried to deflect the blows to his head with his right arm. However, defendant continued to swing the bat with such force that he broke Fisher's arm.

Meanwhile, Perez ran downstairs, picked up a bedpost from the garage, and holding it like a weapon, returned upstairs. Perez intended to use the bedpost on defendant, but because defendant had a tactical advantage, instead ran outside to a neighbor's house and pleaded with the neighbor to call 911.

Fisher and Sanchez eventually retreated to their bedroom and locked the door. Defendant pounded on the door with the baseball bat, causing a large hole in the door. Defendant eventually broke through, entered Sanchez's bedroom and swung at Sanchez. Sanchez picked up a guitar and swung it at defendant. Defendant eventually left. Sanchez called 911 and provided a report of the incident to the 911 operator.²

While Perez was outside, he saw defendant leave in a white car. Defendant was spotted by police at a nearby convenience store. Upon contacting defendant, officers found the baseball bat and knife on the front passenger seat of the vehicle. Officers also noted blood splatter on defendant's legs.

² The 911 call was played for the jury at the time of trial.

Sanchez and Fisher were both treated at a hospital for their injuries. Sanchez received stitches to close the stab wounds to his chest and left arm. Fisher received 14 stitches and eight staples to close his head wound. He was also treated for a broken arm.

Defendant claimed self-defense. He explained that he had the knife and bat in his bedroom; and that he had attacked Sanchez, who was a martial arts expert, because he believed Sanchez was going to kill him.³ He also believed that Perez could have had a knife. He further stated that he had attacked Fisher because he had heard Fisher say that he was going to get a sword Sanchez kept in the garage. He acknowledged that he had hit Fisher in the head hard and that he was trying to kill him.

Defendant claimed that he had attacked the men first because he did not want to wait to see if Perez, Sanchez, or Fisher were going to attack or kill him first. He also testified that after Sanchez and Fisher retreated to their bedroom, he did not leave the house because he was afraid Perez would attack him with the bedpost and he did not want to be forced to attack Perez. Instead, he smashed Sanchez's and Fisher's bedroom door with the baseball bat to scare them.

II

DISCUSSION

Defendant argues that the trial court abused its discretion in violation of his constitutional rights in denying him probation because this was an unusual case where

³ Sanchez acknowledged that he had been practicing martial arts “[o]n and off” for the past 18 years; that he had obtained a black belt; and that he had “[t]wo or three” metal swords.

probation was warranted taking into consideration all of the facts in this case. We disagree.

The trial court is required to determine whether a defendant is eligible for probation. (Cal. Rules of Court, rule 4.413(a).)⁴ All defendants are eligible for probation as long as they do not fall within one of the categories restricting the availability of probation. The most severe restrictions deprive the sentencing court of jurisdiction to grant probation to the defendant; in other words, probation is unconditionally prohibited in certain felony cases. (See, e.g., Pen. Code, §§ 1203.06-1203.09.) Less severe restrictions merely limit the sentencing court's authority to grant probation except in unusual cases in which the interests of justice would best be served by such a grant. (See, e.g., Pen. Code, § 1203, subd. (e).)

Section 1203, subdivision (e), prohibits a grant of probation to defendants who have been convicted under certain circumstances “[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation.” Two such circumstances are when a defendant uses a deadly weapon or inflicts great bodily injury in the commission of an offense. (§ 1203, subd. (e)(2), (e)(3).) Here, under section 1203, subdivision (e)(2) and (e)(3), defendant was presumptively ineligible for probation.

When a defendant is presumptively ineligible for probation, the trial court is required to use the criteria set forth in rule 4.413 to determine whether the presumption is overcome and the interests of justice would be served by a grant of probation. (*People v.*

⁴ All further rule references are to the California Rules of Court unless otherwise indicated.

Superior Court (Du) (1992) 5 Cal.App.4th 822, 830 (*Du*.) Rule 4.413(c) lists factors for the court to consider in evaluating whether the statutory limitation on probation is overcome: “The following facts may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate: [¶] (1) . . . [¶] (A) The fact or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and [¶] (B) The current offense is less serious than a prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial time before the current offense. [¶] (2) Facts limiting defendant’s culpability. [¶] A fact or circumstance not amounting to a defense, but reducing the defendant’s culpability for the offense, including: [¶] (A) The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence; [¶] (B) The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation; and [¶] (C) The defendant is youthful or aged, and has no significant record of prior criminal offenses.”

Defendant contends the trial court should have found this was an unusual case in which the interests of justice would be served by a grant of probation because of his mental condition, his age (47), his lack of a significant criminal record, his remorse, and

his family support. He also maintains that the crimes were committed with great provocation and in self-defense; and that the use of a weapon in this case was “less serious than the ‘typical’ use of a weapon.”

An abuse of discretion standard of review applies. (*Du, supra*, 5 Cal.App.4th at p. 831.) To establish abuse, the defendant must show that, under the circumstances, the sentencing decision was arbitrary, capricious, or ““exceed[ed] the bounds of reason”” (*People v. Warner* (1978) 20 Cal.3d 678, 683, superseded by statute on another ground as stated in *People v. Douglas* (1999) 20 Cal.4th 85, 92, fn. 6; see also *People v. Cazares* (1987) 190 Cal.App.3d 833, 837 [defendant has the burden “to clearly show that the sentencing decision was irrational or arbitrary”].)

We acknowledge that defendant appeared to have committed the crimes due to some mental condition not amounting to a defense; that he could respond favorably to mental health care treatment; and that he does not have a significant record of prior criminal offenses.⁵ However, these factors are insufficient in this case to overturn the trial court’s finding that this was not an unusual case.

Defendant violently attacked Sanchez and Fisher without any provocation by either one of them. The record shows that although Perez may have used words to enrage defendant into attacking Perez, defendant did not attack Perez. Rather, he attacked Sanchez and Fisher, who were merely trying to stop the confrontation. Initially, after

⁵ Defendant has been suffering from paranoid schizophrenia since 1997 or 1998; and according to his examining psychiatrists, his condition is manageable with the use of appropriate drugs.

hearing Perez and defendant arguing, Sanchez, in an attempt to deescalate the confrontation, persuaded Perez to go upstairs. Defendant, however, followed and attacked Sanchez with a knife when Sanchez told him he might go to jail for what he was doing. Defendant stabbed Sanchez in the chest and then in the arm during a struggle over the knife. Subsequently, after Sanchez retreated to his bedroom, defendant turned his rage on Fisher and, as characterized by the trial court, “bludgeoned” Fisher in the head with a baseball bat, intending to kill him. The record supports a finding that defendant did not commit the crimes under circumstances of great provocation by the *victims* and that defendant’s use of the weapons in committing the offenses were far more serious than the “typical” use of a weapon. Moreover, the victims were unarmed, and defendant had an opportunity to leave the house but instead chose to attack the victims. As such, defendant’s claim that he committed the crimes in self-defense is unreasonable.

“[I]f the statutory limitations on probation are to have any substantial scope and effect, ‘unusual cases’ and ‘interests of justice’ must be narrowly construed and, as rule [4.413] provides, limited to those matters in which the crime is either atypical or the offender’s moral blameworthiness is reduced.” (*People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1229 [Fourth Dist., Div. Two].) The trial court here properly exercised its discretion in finding that the presumption against probation eligibility should not be overridden.

Defendant’s reliance on *Du, supra*, 5 Cal.App.4th 822, is misplaced. In *Du*, the appellate court upheld an order granting probation to a defendant convicted of voluntary manslaughter with a firearm because the defendant was a shopkeeper who lawfully

possessed the firearm for protection from ongoing crime by gang members, she had no record of criminal violence, and she acted under circumstances of great provocation. (*Du, supra*, at pp. 825-829, 832-833.) In *Du*, the defendant shot and killed a teenage customer after she struck the defendant in the eye with her fist twice. (*Id.* at pp. 826-827.)

The facts here, viewed with deference to the trial court's decision, do not warrant the same conclusion and do not paint defendant in as favorable a light. Sanchez's comment that defendant may go to jail, defendant's belief that Sanchez was a martial arts expert, and/or defendant's fear that his housemates were going to kill him does not render his provocation or self-defense claims adequate or reasonable. In addition, although Perez may have infuriated defendant, defendant cannot shift that purported provocation to the victims. The factors here do not show defendant's case was "unusual" and, thus, the court's ruling is well within its discretion.

Moreover, the procedural posture in *Du* is different from this case and, therefore, of no assistance to defendant. In *Du*, the trial court found that case to be "unusual" and granted probation. The People thereafter filed a writ of mandate. Under the deferential abuse of discretion standard, the reviewing court affirmed the trial court's grant of probation and denied the People's writ. (*Du, supra*, 5 Cal.App.4th at p. 837.) We must apply that same deferential standard of review to an opposite finding in this case. "The 'abuse of discretion' standard is not met simply by arguing that a different ruling would have been 'better.' Discretion is 'abused' only when, in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'"

[Citations.]” (*Hernandez v. Superior Court* (1992) 9 Cal.App.4th 1183, 1190-1191.)

That limit has not been exceeded in this case. The trial court considered all relevant factors, balanced them carefully, and came to a reasoned decision. No abuse of discretion has been demonstrated.

Here, we cannot find that the denial of probation was an abuse of discretion. The trial court read and considered the probation report, defendant’s sentencing memorandum, defendant’s medical records, and heard from defendant and counsel during the sentencing hearing. It is clear that the court considered the merits of defendant’s application for probation but denied probation due to defendant’s danger to society and foreseeable likelihood he could be a danger to others if he abandons his medication. The court, however, sentenced defendant to the low term, contrary to the prosecutor and probation officer’s recommendations, based on the mitigating factors of defendant suffering from a mental condition, being “provoked to an emotional state in his mind,” impulsively acting violently, and his satisfactory performance on probation. The trial court did not abuse its discretion in denying defendant probation.

III
DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.