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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.

DUANE BLACKBURN,

Defendant and Appellant.

E054909

(Super.Ct.No. RIF1101439)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Patrick DuNah, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On February 9, 2011, a felony complaint charged defendant and appellant Duane Blackburn with assault by means of force likely to produce great bodily injury under

Penal Code¹ section 245, subdivision (a)(1) (count 1); and assault causing serious bodily injury upon the same victim under section 243, subdivision (d) (count 2). As to count 1, the complaint also alleged that defendant personally inflicted great bodily injury on the victim during the commission of the offense within the meaning of section 1192.7, subdivision (c)(8). The complaint further alleged that defendant (1) had a prior conviction for possession of an assault rifle with a gang allegation under section 12880, subdivision (b) and section 186.22, subdivision (b), and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years under section 667.5, subdivision (b); and (2) had a strike prior under sections 1170.12, subdivision (c)(1) and 667, subdivisions (c) and (e)(1).

On March 22, 2011, the trial court declared doubt as to defendant's mental competence; proceedings were ordered suspended under section 1368. Two reports as to defendant's mental competence were prepared and filed, leading counsel to stipulate to the appointment of a third doctor to prepare an additional report. A third report was filed on June 17, 2011. After a hearing, the trial court found defendant mentally competent to stand trial. Criminal proceedings were reinstated.

Pursuant to a plea agreement, defendant admitted his guilt to the battery with serious bodily injury count, and admitted the validity of the alleged strike prior, in exchange for a dismissal of the balance of the enhancements and a stipulated six-year state prison sentence. The trial court therefore sentenced defendant to the midterm of

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

three years, doubled, as agreed. No presentence custody credits were awarded under the plea agreement. The trial court ordered a \$200 restitution fine under section 1202.4, and an additional \$200 parole revocation fine, suspended pending successful completion of parole.

A timely notice of appeal challenging the sentence or other matters occurring after the plea was filed on November 1, 2011.

STATEMENT OF FACTS

No preliminary hearing was held and a preparation of a probation report was waived. As a factual basis for the plea, defendant admitted it was true that on February 3, 2011, he did willfully and unlawfully batter, Michael Valdez, and in doing so, inflicted serious bodily injury upon him.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

RAMIREZ
P. J.

KING
J.