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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.

GUY HUBERT BARNES,

Defendant and Appellant.

E055001

(Super.Ct.No. RIF10002419)

OPINION

APPEAL from the Superior Court of Riverside County. Roger A. Luebs, Judge.

Affirmed.

Victoria Barana, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Guy Hubert Barnes pled guilty to sexual battery (Pen. Code, § 243.4, subd. (a)), and admitted that he had suffered one prior strike conviction (Pen. Code, §§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)).

In exchange, the remaining allegations were dismissed, and defendant was sentenced to a

stipulated term of six years in state prison with credit for time served. Defendant appeals from the judgment, challenging the sentence or other matters occurring after the plea. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

On May 1, 2010, the victim, who was homeless, was in a room of an abandoned building with a friend. Defendant was also in the room.

When the victim asked her friend if they could leave, defendant told her she was not going anywhere “until [she] sucked his dick.” The victim told defendant not to talk to her like that and started to leave, but defendant stood up, pushed her against the wall, and told her she was not going anywhere. The victim’s friend told the victim to run, but defendant restrained her. As her friend left the room to get help, the victim pleaded with him to not leave.

Defendant told the victim to shut up, bent her head down toward his penis, and held her down by the hair. Defendant became more violent and repeatedly hit the victim with a closed fist on the side of her face. The victim pleaded with defendant to let her go and fought back. She also screamed for help. Defendant, however, continued to restrain the victim while forcing her to orally copulate him. The victim’s lips touched defendant’s penis. Because she was afraid defendant was going to kill her, the victim eventually succumbed to defendant’s wishes. She removed her pants and bent down on

¹ The factual background is taken from the preliminary hearing.

her knees. Defendant then touched his penis against the victim's vagina. Subsequently thereafter, the victim saw "three or four" police officers.

Riverside Police Officer Daniel Koehler and his partner responded to "an unknown trouble call." When they first arrived at the scene, they were contacted by the victim's friend, who told them he believed the victim was being raped inside. The officers entered the building and found defendant standing over the victim, who was in a fetal position, with his pants down around his ankles and his penis fully erect and exposed. Defendant was taken into custody. The officers noted that the victim was crying, she had swollen eyes, a laceration above one eye, and scratches on her.

Following a preliminary hearing, on September 20, 2010, an information was filed charging defendant with assault with the intent to commit mayhem, rape, sodomy, or oral copulation (Pen. Code, § 220, subd. (a), count 1) and oral copulation by force or fear (Pen. Code, § 288a, subd. (c)(2), count 2). The information further alleged that defendant had suffered one prior serious felony (Pen. Code, § 667, subd. (a)) and one prior strike conviction (Pen. Code, §§ 667, subs. (c), (e)(1), 1170.12, subd. (c)(1)).

A mistrial was eventually declared in the case when the jury was unable to reach a verdict. The trial court, however, denied defense counsel's request to dismiss the case, finding sufficient evidence for a retrial.

On September 28, 2011, the trial court granted the People's oral motion to amend the information to add count 3, felony sexual battery. (Pen. Code, § 243.4, subd. (a).) Pursuant to a plea agreement, defendant thereafter pled guilty to count 3 and admitted he had suffered a prior strike conviction in exchange for a stipulated six-year sentence and

the dismissal of the remaining allegations. The trial court found that the guilty plea and admission were entered into freely and voluntarily and that defendant knowingly and intelligently waived his rights. Defendant was thereafter immediately sentenced in accordance with his plea agreement and awarded credit for time served.

On November 8, 2011, defendant filed a notice of appeal, challenging the sentence or other matters occurring after the plea, and a request for certificate of probable cause. The trial court denied the request for certificate of probable cause.

DISCUSSION

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, potential arguable issues, and requesting this court conduct an independent review of the 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 independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.