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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.

EDGAR GUDINO,

Defendant and Appellant.

E055749

(Super.Ct.No. RIF1103487)

OPINION

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

Affirmed.

Kenneth H. Nordin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On July 15, 2011, a felony complaint charged defendant and appellant Edgar Gudino with: (1) deliberate and premeditated attempted murder of Shadeed Niblett under

Penal Code sections 664 and 187, subdivision (a) (count 1); (2) deliberate and premeditated attempted murder of Clara McClure under Penal Code sections 664 and 187, subdivision (a) (count 2); (3) discharging a firearm at an inhabited dwelling house, occupied building, and occupied motor vehicle under Penal Code section 246 (count 3); (4) possession of a pistol in violation of Penal Code section 12021, subdivision (a)(1), after having been convicted of a felony in violation of Vehicle Code section 10851, subdivision (a) (count 6); (5) possession of a shotgun in violation of Penal Code section 12021, subdivision (a)(1), after having been convicted of a felony in violation of Vehicle Code section 10851, subdivision (a) (count 7); (6) felony violation of Health and Safety Code section 11377, subdivision (a), possession of methamphetamine (count 8); and (7) participation in a criminal street gang, “PMV,” in violation of Penal Code section 186.22,¹ subdivision (a) (count 9).²

In connection with counts 1, 2, and 3, the complaint alleged that defendant committed the offenses for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b); and that defendant personally and intentionally discharged a firearm and caused great bodily injury within the meaning of sections 12022.53, subdivision (d), and 1192.7, subdivision (c)(8). In connection with count 3, the complaint alleged that defendant personally used a firearm within the meaning of

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

² Two other defendants, Eddie Gudino and Cesar Arenas, were also charged in the felony complaint, which contained a total of nine counts. They are not parties to this appeal.

sections 667 and 1192.7, subdivision (c)(8). The complaint further alleged that defendant served four prior prison terms within the meaning of section 667.5, subdivision (b).

The parties entered into a plea agreement. Defendant agreed to plead guilty to an amended count 1 and to count 9. The parties agreed that count 1 would be amended to charge attempted murder without premeditation. It was also agreed that defendant would admit that: the offense in count 1 was committed for the benefit of a gang under section 186.22, subdivision (b); and he personally used a firearm under section 12022.53, subdivisions (b) and (e)(1). Furthermore, it was agreed that both counts 1 and 9 are strikes, and that defendant would admit that he served one prior prison term under section 667.5, subdivision (b).

In exchange for defendant's guilty plea and admissions, the plea agreement provided that the prosecutor would dismiss all other charges and enhancements, and defendant would be sentenced to 30 years in prison. The People also amended count 1, by interlineation, to indicate that the offense was committed without premeditation.

On November 1, 2011, in accordance with the plea agreement, defendant pled guilty to counts 1 and 9; admitted that count 1 was committed for the benefit of a gang; and admitted to one prison prior. After questioning defendant, the trial court found a factual basis for the plea. Defendant waived referral to the probation department and waived time for sentencing until January 23, 2012.

At the sentencing hearing in January, the trial court sentenced defendant to a total term of 30 years, as follows: (1) Nine years for count 1; (2) Two years for count 9, to run

concurrent; (3) 10 years, to run consecutive, for the gang enhancement; (4) 10 years, to run consecutive, for the firearms enhancement; and (5) one year, to run consecutive, for the prior prison term. Thereafter, the court granted the prosecutor's motion to dismiss the remaining counts.

On February 17, 2012, defendant filed a timely notice of appeal "based on the sentence or other matters occurring after the plea that do not affect the validity of the plea." Defendant did not file a request for certificate of probable cause.

STATEMENT OF FACTS

Defendant admitted that the factual basis for the plea was based on the complaint. Defendant admitted that: (1) he attempted to kill, without, premeditation, another human being; (2) he personally used a firearm; (3) he was a principal in the crime; (4) he committed the crime to promote a criminal street gang; and (5) he was an active participant in that gang.

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.

MILLER
J.