

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ADAM GRAZER,

Defendant and Appellant.

E055873

(Super.Ct.No. FBA1100490)

OPINION

APPEAL from the Superior Court of San Bernardino County. Miriam I. Morton, Judge. Affirmed.

Maureen M. Bodo, 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 Jason Adam Grazer pled nolo contendere to assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and admitted that he had inflicted great bodily injury on a person 70 years of age or older (Pen. Code, § 12022.7, subd. (c)) in the commission of the assault. In return, the

remaining allegations were dismissed, and defendant was sentenced to the stipulated term of nine years in state prison with credit for time served. Defendant appeals from the judgment, challenging the validity of the plea. We find no error and affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

In August 2011, defendant was renting an apartment owned by the then 77-year-old victim and his wife. The victim and his wife lived about a half a block away. On the evening of August 7, the victim was attacked by defendant. Police and ambulances were called, and the victim was taken to the hospital.

San Bernardino County Sheriff's Deputy Romero responded to the scene and spoke with neighbors. One neighbor reported that defendant had been standing near her door and threatening her. Deputy Romero also interviewed the victim, who was bleeding from his nose, mouth, and leg, and had blood on his chest, stomach, and ankles. The victim stated that he was outside talking to a neighbor, when he heard a loud noise coming from where defendant lived. As he went to investigate the noise, defendant hit him on the side of the head with a rock.<sup>2</sup> Defendant had a history of throwing rocks at neighbors' homes. Another neighbor reported that he saw a person matching defendant's description beating someone.

Deputy Romero was familiar with defendant from previous contacts and went to defendant's residence. The deputy found wet blood splatters near the steps of

---

<sup>1</sup> The factual background is taken from the preliminary hearing transcript.

<sup>2</sup> The victim testified that he did not know who had attacked him.

defendant's residence, as well as around another residence. Defendant was found uninjured, walking about a mile from his residence, with no blood on him. He claimed that the incident was the fault of law enforcement.

The victim spent about three weeks in the hospital. He had fractures to his head and vertebrae, leg and facial lacerations, bruising on his neck and chest, and kidney damage. In addition, the victim had ongoing effects of memory loss and difficulty breathing and walking due to the attack.

On August 16, 2011, a four-count first amended felony complaint was filed. However, criminal proceedings were suspended due to defendant's mental competency. The court ordered two psychological evaluations to determine defendant's competency. On November 16, 2011, after the court reviewed both reports, it found defendant competent to stand trial and the criminal proceedings were reinstated.

The preliminary hearing was held on December 2, 2011. An amended information was filed on December 8, 2011, charging defendant with attempted murder (Pen. Code, §§ 664, 187, subd. (a), count 1); assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1), count 2); assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1), count 3); and making criminal threats (Pen. Code, § 422, count 4). The amended information also alleged that in the commission of counts 1 and 2, defendant inflicted great bodily injury on a person 70 years of age or older. (Pen. Code, § 12022.7, subd. (c).) The amended information further alleged that defendant had sustained a prior prison term. (Pen. Code, § 667.5, subd. (b).)

On February 2, 2012, pursuant to a plea agreement, defendant pled nolo contendere to count 2 and admitted the great bodily injury enhancement attached to that count in exchange for a stipulated nine-year sentence and the dismissal of the remaining charges. After directly examining defendant, the court found that defendant understood the nature and the consequences of the plea and the offenses; that the plea was entered into freely and voluntarily; and that defendant knowingly and intelligently waived his rights. At defendant's request, sentencing was thereafter immediately imposed. Defendant was sentenced in accordance with his plea agreement, and he was awarded credit for time served.

On March 13, 2012, defendant filed a notice of appeal and a request for a certificate of probable cause. Defendant challenges the validity of the plea based on ineffective assistance of counsel and being forced to enter the plea. The trial court granted the request for a 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 and potential arguable issues, and requesting this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. In three separate letter briefs, defendant essentially argues the facts of the case, claiming he attacked the victim in self-defense and that the incident would not have

occurred if the police would have taken him to jail when he had previously broken the victim's window. He further argues that his counsel was ineffective and that his counsel forced him to plead guilty.

“When a defendant pleads not guilty and is convicted as the result of a trial, in general any issue bearing on the determination of guilt and apparent from the record is cognizable on appeal. (See [Pen. Code,] § 1237.) By contrast, when a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.)

The evidentiary or factual issues raised in defendant's supplemental briefs concern the determination of guilt or innocence and are not cognizable. In addition, regarding the ineffective assistance of counsel allegations, these are based on matters outside the record on appeal. Ineffective assistance of counsel claims based on matters outside the record on direct appeal are more appropriately raised in a habeas corpus proceeding. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Further, there is no evidence in the record to suggest that defendant was forced by his trial counsel into accepting his no contest plea. We must therefore reject defendant's ineffective assistance of counsel claims.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we independently reviewed the record for potential error. We have now completed our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

MILLER  
J.