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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.

MARIO RODRIGUEZ FLORES,

Defendant and Appellant.

E056368

(Super.Ct.No. BAF10000623)

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.

Thomas K. Macomber, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

On June 13, 2011, an information charged defendant and appellant Mario Rodriguez Flores with one count of violating Penal Code<sup>1</sup> section 245, subdivision (a)(1), assault with a deadly weapon, including an allegation that defendant inflicted great bodily injury. (§§ 12022.7, subd. (a), 1192.7, subd. (c)(8).)

On January 27, 2012, a jury returned its verdict. However, prior to reading the verdict, the trial court noted that the verdict forms were incomplete because the allegation forms had not been filled out. After deliberating further, the jury returned a verdict of guilty and found the special allegation to be true.

On March 1, 2012, the trial court considered and granted defendant's request for new counsel to review his case for purposes of filing a motion for new trial.

On April 27, 2012, defense counsel informed the trial court that she had reviewed the file and had met with defendant. She did not see any grounds for a motion for new trial, and stated, "we are ready to proceed." The trial court then sentenced defendant. Probation was denied and defendant was ordered to serve five years in state prison, calculated as follows: the low term of two years for the assault with a deadly weapon conviction, plus three years for the great bodily injury allegation. The trial court awarded defendant four days of presentence credits, imposed restitution fines, and court security and construction fees.

On May 23, 2012, defendant filed a timely notice of appeal.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## STATEMENT OF FACTS

### A. *Prosecution Case*

Defendant and the victim are cousins. Defendant lived with his mother, who is the victim's aunt, in Beaumont. They lived about four or five blocks from the victim.

In August 2010, the victim lived with his longtime girlfriend, Becky Rocha. The victim kicked Rocha out of the house. Missing Rocha, the victim went to defendant's house and mentioned his feelings to defendant. Defendant informed the victim that Rocha was staying with defendant in defendant's room. The victim started yelling for Rocha to come outside; she never did. The victim continued to go to defendant's residence daily looking for Rocha. Rocha testified that she had to call the police "several times."

Rocha and the aunt went to the victim's house to pick up some of her belongings; she refused to talk to the victim about their relationship. Rocha asked for pictures, which were in storage. A few days later, the victim went back to defendant's house with the pictures. The victim placed the larger pictures next to a tree, threw the smaller ones in the driveway, and left.

On August 31, 2010, the victim was home cleaning his kitchen when defendant walked in. Defendant appeared upset and started telling the victim that throwing the pictures was disrespectful. Defendant then took out his cell phone as if to call or text someone. Immediately thereafter, the victim heard a noise at the front door. He saw a man wearing a handkerchief on his face and holding a baseball bat by the door. The victim ran into the bathroom and shut the door. Defendant started kicking the door and

saying, “[o]pen the door, open the door.” The victim opened the door, rushed the person with the bat, and hit him once. The victim then grabbed the man around the neck as they fought for the bat. Defendant, who was behind the victim, took the bat and started hitting the victim with it. As the victim lay on the floor, defendant kept hitting him on the back, arm, and legs, and the man wearing the handkerchief was punching him in the face. The victim was yelling, “you’re my cousin . . . you’re my cousin.” The victim tried to block the bat with his feet. Defendant yelled with each swing of the bat, “You’re going to leave her alone.” The victim told defendant, “I can’t breathe.” The man wearing the handkerchief kept saying, “Say you’re not going to disrespect my family’s house.” The victim finally said, “Okay. Okay.” That’s when defendant stopped and both men left.

The victim dragged himself into the kitchen and called 911. He felt like he was going to die.

Officer Granada saw the victim lying on the floor, bleeding and in pain. His face was bruised and there were “bloodstains and splatters throughout the house.” The victim was “gurgling” liquid when he tried to talk; he told the officer that defendant and another unknown male hurt him.

The victim was hospitalized for a week. He had surgery on his arm and had to wear a cast on his leg.

Early in the morning of September 1, 2010, Sergeant Morning contacted Rocha. Rocha stated that she and defendant were “boyfriend/girlfriend.”

B. *Defense Case*

Defendant testified that Rocha moved into his home on August 9, 2010. About a week later, he told the victim that Rocha had moved in. On August 30, defendant went to the victim's home. When he left, they were on good terms. On August 31, defendant's daughter drove him to Arturo Loera's house in Banning. He was there all day until after 9:00 p.m., when his daughter picked him up. On the way home, defendant received a phone call from his mother telling him that the victim had been attacked and the police were looking for him. Defendant's daughter drove him to a bail bond office.

Defendant further testified that on August 31, 2010, defendant was not dating Rocha. They started to date on September 2 or 3. He had no prior altercations with the victim, but knew there was going to be trouble because Rocha was staying in defendant's house.

In October 2009, defendant had a stroke. Physical therapist Leonard Adorador was treating defendant. The stroke affected defendant's right side, causing a weak hand and leg. Defendant had an "abnormal gait pattern" and struggled gripping and opening his hand. In April 2010, defendant had to swing his leg to the side to walk. In Adorador's opinion, defendant could swing a bat with his left hand, but he did not have the strength to use his right hand only.

Cruz Martinez testified that defendant and "a whole bunch of guys" were hanging out on his property in Banning on August 31, 2010, "close to noontime" until "around the time the sun went down."

Loera lives next door to Martinez. He testified that defendant is like “family,” and defendant was with him on August 31, 2010, drinking alcohol and hanging out on Martinez’s property. He stated that defendant’s daughter dropped defendant off around 1:00 or 2:00 p.m., and picked him up sometime after 8:00 p.m.

Amanda Flores is defendant’s daughter. She testified that she dropped defendant off at Loera’s house on August 31, sometime before 10:00 a.m. She worked until 7:00 p.m. in Cabazon. Thereafter, she went to Loera’s house to get defendant. He was not ready to leave so she went to her boyfriend’s house until approximately 9:00 p.m., and then went back to Loera’s house. She stayed at Loera’s house for about 20 minutes, then she and defendant left. On the way home, defendant received a phone call from his mother. She drove defendant to a bail bond office. She never took defendant to the victim’s house.

### **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, and he has done so. On December 21, 2012, defendant submitted a two-page handwritten brief. However, on January 28, 2013, in a typewritten brief, defendant asks us “to disregard my last correspondence.” Instead, it appears that defendant requests us to review:

(1) whether the trial court properly sentenced defendant; and (2) whether defendant received a fair trial due to his mental illness. Defendant, however, fails to provide any legal basis for his contentions. “[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]’ [Citations.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) We, therefore, deem any arguments made by defendant waived.

In any event, we reject defendant’s assertions. First, in challenging the sentence, defendant essentially argues that the trial court abused its discretion. Sentencing decisions are reviewed for abuse of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) Defendants bear a heavy burden when attempting to show an abuse of discretion. (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282.) ““In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ [Citation.]” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

Here, the record amply supports a determination that the sentencing court was sufficiently well informed regarding the facts of the instant case and the relevant details of defendant’s background, such that it acted appropriately in its imposition of sentence. During the sentencing hearing, the trial court stated: “[T]he Court certainly isn’t dealing with your case lightly, and I really have reviewed your record several times to see if I could find anything stated in the probation report, or any of the factors that I remembered

from the trial that would help me to be able to find this one to be an unusual circumstance case where probation could be granted. [¶] But I just can't. I just can't. I mean, I don't find it, and I can't make it out of what you call 'old cloth.' There's nothing in your record that would show unusual circumstances. . . . [¶] [¶] . . . I think your lack of criminal—or minimal criminal history. Let's put it that way. Your minimal criminal history doesn't allow the Court to find unusual circumstances. It really just goes to allowing the Court to use that minimal criminal history to give you a low term as opposed to giving you a middle or upper term in this case.” The trial court then did indeed impose the low term on the principal count of two years. Thereafter, the court remarked that the jury found the allegation true that defendant inflicted great bodily injury. “And because the matter of the finding is true that you inflicted great bodily injury, the law requires the three-year enhancement be imposed also, for a total term of five years.”

We find that the trial court did not abuse its discretion in sentencing defendant to a total term of five years.

Second, we address defendant's contention that he did not know what was going on at trial because of his mental condition. In support of this, defendant asks us to review the “Olsen Report Medical Documentation,” which was received by this court on January 14, 2013. We have reviewed the reports and take judicial notice of them. In the reports, the doctors recognize that defendant had suffered a stroke in 2009. The reports also chronicle defendant's other physical ailments. A review of the reports, however, fails to show that defendant has or had a mental condition, which would prevent him from comprehending what occurred during his trial or to participate in his trial. To

the contrary, the transcript of the trial indicates that defendant mounted a defense and participated actively in his defense. We cannot find anything in the record to indicate that defendant “did not know what was happening most of the trial” as stated in his supplemental brief.

Nonetheless, because defendant argues that he “was never advised by [his] counsel” regarding the trial, we treat his argument as an ineffective assistance of counsel contention. In order to establish a claim of ineffective assistance of counsel, defendant must demonstrate, “(1) counsel’s performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient representation prejudiced the defendant, i.e., there is a ‘reasonable probability’ that, but for counsel’s failings, defendant would have obtained a more favorable result. [Citations.] A ‘reasonable probability’ is one that is enough to undermine confidence in the outcome. [Citations.]” (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541, citing, among other cases, *Strickland v. Washington* (1984) 466 U.S. 668.) Hence, an ineffective assistance of counsel claim has two components: deficient performance and prejudice. (*Strickland*, at pp. 687-688, 693-694.) If defendant fails to establish either component, the claim fails.

When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel’s challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation. (*People v. Pope* (1979) 23 Cal.3d 412, 426.)

In this case, defendant contends that his counsel rendered ineffective assistance because counsel failed to advise him of “what was happening most of the trial” when he had a mental illness. There is no evidence to support defendant’s conclusory statement. As stated *ante*, there is no evidence that defendant suffered from a type of mental illness that would hinder his ability to comprehend the trial. In fact, the evidence shows that defendant was an active participant in his defense. Moreover, defense counsel was active in the trial—providing defendant’s theory and examining many defense witnesses.

Moreover, defendant cannot demonstrate that counsel’s alleged deficient representation prejudiced him, i.e., that there is a reasonable probability that, but for counsel’s purported failings, defendant would have received a more favorable result. (*People v. Dennis*, *supra*, 17 Cal.4th at pp. 540-541; *Strickland v. Washington*, *supra*, 466 U.S. at p. 687.)

We have reviewed the entire record to determine whether there was substantial evidence to support the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307 [standard of review for sufficiency of evidence claims]; see also *People v. Ceja* (1993) 4 Cal.4th 1134, 1138 [same].) The evidence was overwhelming of defendant’s guilt. The victim provided solid testimony of how he was injured, and clearly identified defendant. Furthermore, the physical evidence corroborated defendant’s testimony. There was ample solid and credible evidence, direct and circumstantial, to support the jury’s verdict. Defendant’s arguments to the contrary were credibility issues for the jury to resolve. (*People v. Young* (2005) 34 Cal.4th 1149, 1181 [in deciding whether substantial evidence supports the decision of the trial court, we do not resolve issues of credibility or

evidentiary conflicts]; *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1331 [resolution of conflicting evidence and credibility issues are for a jury to decide].)

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  
Acting P.J.

We concur:

MILLER  
J.

CODRINGTON  
J.