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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.

DAVID GREEN,

Defendant and Appellant.

E063629

(Super.Ct.No. FVI1303443)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Nancy S. Brandt, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant David Green is serving 16 years in state prison after pleading guilty to assault with a firearm, with associated gang, firearm and great bodily injury enhancements, for shooting at and injuring two men.

FACTS AND PROCEDURE

On the evening of October 2, 2013, defendant got into an altercation in front of a home in Barstow. He was with two gang members who tried to “jump” a man named Ryan O’Neil. O’Neil knocked a tooth out of defendant’s mouth, and then ran inside the home. About an hour later, defendant returned to the home on the pretext of looking for his cellular phone charger. As he pretended to look for something on the ground, defendant pulled out a firearm and fired about six shots into the enclosed front porch of the home. The shots hit O’Neil and another man. O’Neil was hit in the neck just two inches from his spine and suffered a punctured lung, a broken rib and a broken shoulder blade. The other man had a bullet fragment in his chin. He initially sought treatment in the emergency room but got tire of waiting and pulled out the fragment himself.

On July 16, 2014, defendant was arrested in Las Vegas at the home of his sister.

On November 20, 2014, the People filed a first amended information charging defendant with two counts of attempted murder (Pen. Code, §§ 664 and 187, subd. (a)).¹ As to both counts, the People alleged defendant personally used a handgun (§ 12022.53, subd. (d)) and committed the offense for the benefit of a criminal street gang (§ 186.22, subds. (b)(1)(C) and (b)(4)).

On January 5, 2015, the People amended the information to allege a new count 3, felony assault with a firearm (§ 245, subd. (a)(2)). The People alleged as to this count that defendant personally used a firearm (§ 12022.5, subds. (a) and (d)), that he

¹ All section references are to the Penal Code unless otherwise indicated.

committed the offense for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(B)), and that he inflicted great bodily injury (§ 12022.7, subd. (a)). Also on that date, defendant pled no contest to count 3 and admitted all three enhancements. The trial court dismissed the two attempted murder counts and enhancements.

On April 21, 2015, defendant filed a motion to withdraw the plea based on coercion by and ineffective assistance of counsel. After a hearing held on May 8, 2015, the trial court denied the motion. Also on May 8, 2015, the trial court sentenced defendant to 16 years in prison as follows: the upper term of four years for the assault with a firearm, plus three years for the bodily injury enhancement, plus five years for the gang enhancement, plus four years for the personal use of a firearm enhancement, all to be served consecutively.

This appeal followed. The court denied defendant's request for a certificate of probable cause.

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. 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 and a summary of the facts and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we

have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.