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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.

ALEXANDER RUBEN ARGOTT,

Defendant and Appellant.

E065996

(Super.Ct.No. BAF1600026)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Affirmed.

David Cohen, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Alexander Ruben Argott was charged by felony
complaint with infliction of corporal injury on a spouse or cohabitant. (Pen. Code,

§ 273.5, subd. (a), count 1.)¹ The complaint further alleged that, in the commission of count 1, defendant personally inflicted great bodily injury on the victim. (§§ 12022.7, subd. (e) & 1192.7, subd. (c)(8).) It also alleged that he had served six prior prison terms (§ 667.5, subd. (b)), and that he had a prior serious felony conviction for battery with serious bodily injury (§ 243, subd. (d)), within the meaning of section 667, subdivision (a), and sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1). Pursuant to a plea agreement, defendant pled guilty to count 1, admitted the great bodily injury enhancement, admitted three prison priors, and admitted the prior strike conviction.

In accordance with the plea agreement, the court sentenced him to a total term of 13 years in state prison, consisting of the midterm of three years on count 1, doubled pursuant to the strike, four years on the great bodily injury enhancement, and one year on each of the prison priors. The court also awarded 78 days of presentence custody credits, and imposed a \$300 restitution fee (Pen. Code, § 1202.4), a \$300 parole revocation fee (Pen. Code, § 1202.45), a \$40 court operations assessment fee (Pen. Code, § 1465.8), and a \$30 court facilities fee (Gov. Code, § 70373).

Defendant filed a timely notice of appeal and filed a request for certificate of probable cause, which the court granted. We affirm.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

PROCEDURAL BACKGROUND

Defendant was charged with and admitted that, on or about January 3, 2016, he committed the crime of inflicting corporal injury on his spouse or cohabitant, a felony. (§ 273.5, subd. (a).)

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 and a few potential arguable issues: (1) whether “serious bodily injury” under section 243 is equivalent to “great bodily injury” for strike purposes, and thus, whether it was proper to treat his prior conviction for battery with serious bodily injury (§ 243, subd. (d)) as a strike; (2) whether he was advised of the consequences of pleading guilty and his constitutional rights, and whether he waived his rights; (3) whether his plea was supported by a factual basis; (4) whether he received the agreed upon sentence, and whether that sentence was authorized; and (5) whether the fines, fees, and credits were calculated correctly. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. In a handwritten letter, defendant argues that the court erred in finding a factual basis for the plea based on the complaint. He also contends that battery with serious bodily injury (§ 243, subd. (d)) is not a strike. He asserts that he previously pled

guilty to that offense, “but not as a strike.” He also argues that his counsel rendered ineffective assistance by failing to investigate the prior strike allegation and allowing him to admit to the prior conviction as a strike. Defendant’s claims fail.

Defendant first contends that the court erred in finding a factual basis for the plea. We disagree. “Section 1192.5 provides that for a conditional plea of guilty or no contest, the trial court is required to ‘cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.’ While there is no federal constitutional requirement for this factual basis inquiry, the statutory mandate of section 1192.5 helps ensure that the ‘constitutional standards of voluntariness and intelligence are met.’ [Citation.]” (*People v. Holmes* (2004) 32 Cal.4th 432, 438, fn. omitted (*Holmes*).

“[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court’s acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion. [Citation.] A finding of error under this standard will qualify as harmless where the contents of the record support a finding of a factual basis for the conditional plea.” (*Holmes, supra*, 32 Cal.4th at p. 443.)

In *Holmes, supra*, 32 Cal.4th 432, the defendant entered a plea of guilty to count 1 in the complaint filed against him, in exchange for the dismissal of another count. When ascertaining whether there was a factual basis for the plea, the court asked the defendant, “‘Did you do what it says you did in Count 1 on March 24th, 2000 in Riverside

County?”” (*Id.* at p. 437.) The defendant answered in the affirmative, and the court found there was a factual basis for the plea. (*Ibid.*)

On appeal, the defendant in *Holmes* argued that the trial court failed to establish a sufficient factual basis for his plea in accordance with section 1192.5. (*Holmes, supra*, 32 Cal.4th at p. 438.) The appellate court affirmed, finding that the trial court had fulfilled its duty by its inquiry. (*Ibid.*) The California Supreme Court agreed, stating that “[t]he trial court did not conduct an extensive inquiry with defendant to develop the factual basis on the record, nor did it request that defense counsel stipulate to a particular document that provides an adequate factual basis.” (*Id.* at p. 443.) However, “the complaint to which the trial court referred contained the charged offense, the names of defendant and the victim, the date and location of the charged offense, and a brief description of the factual basis for the charged offense.” (*Ibid.*) The Supreme Court concluded that “[s]uch a complaint provide[d] a sufficiently precise factual account of the charged offense” and that “the trial court’s questioning of defendant about the factual basis in the complaint was adequate to establish that defendant was cognizant that his acts did constitute the offense with which he was charged, . . .” (*Ibid.*)

In the instant case, the record demonstrates that an on-the-record inquiry as to the factual basis was made by the trial court, prior to accepting defendant’s guilty plea. The court asked defendant, “Is it true that on January 3rd, 2016, in this state and county you did inflict a corporal injury resulting in a traumatic condition upon Jane Doe whose initials are A.L. and that person was either your wife, your former wife, somebody you

were living with or had lived with, or somebody that you parented a child with? Is that true or not true?” Defendant answered in the affirmative, and the court found that there was a factual basis for the plea. We see no abuse of discretion. (See *Holmes, supra*, 32 Cal.4th at p. 443.)

Defendant next appears to be claiming that he received ineffective assistance of counsel because his counsel failed to investigate his prior conviction and allowed him to admit he had a prior strike. He admits that he previously pled guilty to the charge of battery with serious bodily injury (§ 243, subd. (d)), but says it was “not as a strike.” He argues that his defense counsel should have attempted to retrieve documents from the prior proceeding “in order to review the record *so that prior strike can be determined.*” (Italics added.) Thus, he is not asserting that the conviction did *not* qualify as a strike; rather, he seems to be stating that he did not know if it did or not. He finally contends that he was prejudiced by his counsel’s failure to investigate because “it is reasonably probable that [he] would not have signed or agreed to the plea [in the current case] had [he] known that [his] prior conviction . . . was not a strike.”

Defendant has failed to establish ineffective assistance of counsel. “To establish ineffective assistance of counsel under either the federal or state guarantee, a defendant must show that counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel’s deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel’s failings, the result would have been more favorable to the defendant.

[Citations.]” (*In re Roberts* (2003) 29 Cal.4th 726, 744-745.) “If a claim of ineffective assistance of counsel can be determined on the ground of lack of prejudice, a court need not decide whether counsel’s performance was deficient.” (*In re Crew* (2011) 52 Cal.4th 126, 150 (*Crew*).

Under the three strikes law (§§ 667, subs. (b)-(i), 1170.12, subs. (a)-(d)), a prior felony conviction qualifies as a strike if it is either a violent felony, as described in section 667.5, subdivision (c), or a serious felony, as described in section 1192.7, subdivision (c). (See § 667, subd. (b)-(i).) Section 667.5, subdivision (c)(8), defines a “violent felony” as “any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9” Section 1192.7, subdivision (c)(1), defines a “serious felony” as “any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.” In order for this definition to apply, it must be established the defendant personally inflicted great bodily injury and the victim, upon whom the injury was inflicted, was not an accomplice. (*People v. Henley* (1999) 72 Cal.App.4th 555, 559.) Consequently, a court would need to look to the facts surrounding the conviction in defendant’s previous case for battery with serious bodily injury to determine if the conviction fit either definition of a strike. However, defendant has not alleged or shown any circumstances or facts concerning his prior conviction. The record before us only shows that defendant admitted in the current case that, on November 4, 2011, he was

convicted of a prior strike offense for the crime of battery with serious bodily injury. (§ 243, subd. (d).) In other words, the record demonstrates that defendant had a prior strike conviction, and he has not shown otherwise.

Furthermore, defendant has not established that he was prejudiced, e.g., that, but for his counsel's alleged error, there is a reasonable probability that the result would have been more favorable. He contends that he was prejudiced by his counsel's failure to investigate because he would not have signed the plea agreement if he had known that his prior conviction was not a strike. First, as stated *ante*, he has not shown that his prior conviction was not a strike. Second, he has not shown that the result would have been more favorable to him, if he did not sign the plea agreement (assuming the prior conviction was not a strike). If he went to trial and was found guilty, and it was shown that the other allegations were true, he could have been sentenced to up to 14 years in prison.² Instead, he voluntarily entered a plea agreement and agreed to the term of 13 years. Thus, defendant has not shown a reasonable probability that, if his counsel had investigated the prior strike allegation, it would have resulted in a lesser sentence. As such, his claim fails.

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.

² The punishment for a conviction of section 273.5 (the current offense) was two, three, or four years. (§ 273.5, subd. (a).) Thus, the court could have sentenced him to the upper term of four years, four years on the great bodily injury enhancement (§ 12022.7, subd. (e)), and one year on each of the six prison priors (§ 667.5, subd. (b)).

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.