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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY DARNELL THOMAS,

Defendant and Appellant.

F063566

(Super. Ct. No. DF009998A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Kelly Babineau, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Wiseman, Acting P.J., Cornell, J., and Poochigian, J.

## STATEMENT OF THE CASE

On June 20, 2011, appellant, Larry Darnell Thomas, was charged in an information with assault with a deadly weapon by means likely to cause great bodily injury on a correctional officer by an inmate undergoing a life sentence (Pen. Code, § 4500, count 1),<sup>1</sup> assault with a deadly weapon by means likely to cause great bodily injury by an inmate on an officer (§ 4501, count 2), committing a battery by an inmate on a non-inmate (§ 4501.5, count 3), resisting an executive officer by means of force (§ 69, count 4), and making a criminal threat (§ 422, count 5). Counts 1, 2, and 3 alleged a great bodily injury enhancement (§ 1192.7, subd. (c)(8)). The information alleged appellant had four prior serious felony convictions within the meaning of the three strikes law (§§ 667, subds. (c)-(j) & 1170.12, subds. (a)-(e)).<sup>2</sup>

On October 3, 2011, the trial court denied a motion brought by appellant pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. A discovery motion and a motion for nonstatutory dismissal of the allegations were also denied.

On October 7, 2011, appellant waived his constitutional rights pursuant to *Boykin/Tahl*.<sup>3</sup> Appellant executed a Felony Advisement of Rights, Waiver and Plea Form. In exchange for appellant's admission of count 3, two prior serious felony allegations, and a great bodily injury enhancement, the remaining allegations would be dismissed. Appellant would be sentenced to a stipulated term of two years, doubled to four years pursuant to the three strikes law, plus a consecutive term of three years for the great bodily injury enhancement. Appellant's total prison term would be seven years to

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

<sup>2</sup> Counts 1 through 5 related to an incident on November 9, 2007, involving Correctional Officer H. Robles. The information also included counts 6 and 7, an incident on July 20, 2009, involving Correctional Officer Yates.

<sup>3</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

be served consecutively to the term for which he was incarcerated. The trial court determined that appellant initialed and executed the plea waiver form and understood he was giving up his rights. The parties stipulated to a factual basis for the plea based on law enforcement reports and the preliminary hearing.

Appellant pled no contest to count 3, admitted two strike priors, and admitted the great bodily injury enhancement. The court sentenced appellant to the stipulated sentence of seven years in prison pursuant to the plea agreement and imposed a \$200 restitution fine and other fines and fees.<sup>4</sup>

### **FACTS**

On November 9, 2007, Hector Robles was working as a correctional officer at Kern Valley State Prison. At 11:00 a.m., Robles was on duty at the medical clinic when he came into contact with appellant. Robles saw that appellant had talked to a nurse and was standing in a line to talk to a doctor. Robles walked up to appellant to ask if there was anything else he needed. Appellant said he was “in fucking pain” and needed to see “the fucking doctor.”

Appellant turned to his left and appeared to be leaving. Robles ordered appellant to leave the area and report back to his assigned building. Robles directed his attention to other inmates who were also in the medical facility. All of a sudden, Robles was hit in his left eye by appellant’s closed fist. Robles saw a burst of his own blood. Robles had been struck generally in the face, including his left eye and lower lip. Robles ordered appellant to get down. Appellant did not comply.

Appellant continued to strike Robles on the head with closed fists. Robles was eventually successful in positioning himself behind appellant, wrapping his arms around him, placing his foot in front of appellant’s ankle, and using his own body weight to bring

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<sup>4</sup> Appellant filed a timely notice of appeal and obtained a certificate of probable cause.

appellant to the ground. Robles felt a pop in his shoulder as he and appellant hit the ground. Robles's wrist and knee hit the concrete. Appellant continued to struggle and resist Robles as Robles tried to get restraints on appellant's hands. Soon other officers restrained appellant. Robles's eyes were blurry.

As a result of appellant's assault, Robles had to undergo five surgeries. Robles's eye was operated on to remove eye muscle closest to Robles's nose. There was also a blowout fracture of Robles's nasal passage. Robles had plastic surgery and surgery on his shoulder. Robles had surgery on his eye to correct double vision. Robles felt soreness to his facial area and tenderness to the touch of his skin.

### **APPELLATE COURT REVIEW**

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on April 5, 2012, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

### **DISPOSITION**

The judgment is affirmed.