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

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY WILLIAM STARLING,

Defendant and Appellant.

F065302

(Super. Ct. No. BF138524A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Linda M. Leavitt, 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 Kane, Acting P.J., Detjen, J. and Oliver, J. †

† Judge of the Superior Court of Fresno County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A jury convicted appellant Gregory William Starling of premeditated attempted murder (count 1/Pen. Code, §§ 664 & 187, subd. (a)),¹ assault with a deadly weapon (count 2/§ 245, subd. (a)(2)) and possession of firearm by a felon (count 3/§ 12021, subd. (a)(1)). The jury also found true personal use of a firearm enhancements pursuant to sections 12022.53, subdivision (d) and 12022.5, subdivision (a) in count 1; and a personal use of a firearm enhancement (§ 12022.5, subd. (a)) and a great bodily injury enhancement (§ 12022.7) in count 2. In a separate proceeding, the court found true a serious felony enhancement (§ 667, subd. (a)), two prior prison term enhancements (§ 667.5, subd. (b)) and allegations that Starling had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On July 6, 2012, the court sentenced Starling to an aggregate indeterminate term of 46 years to life. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we affirm.

FACTUAL AND PROCEDURAL HISTORY

On September 12, 2011, around 9:00 or 10:00 a.m., Starling was accompanied by another man when he approached Marcus Williams at the Royal Palms Motel, gave Williams some money, and asked him if he could get some crystal methamphetamine. Williams winked at Starling and he winked back as Williams told him to wait before he left to get the drugs. Williams soon returned with the drugs and told Starling he needed \$5 more, which Williams thought the other man would pay. Instead, Starling gave him the additional \$5.

At approximately 1:00 p.m., while Williams was smoking crack in a motel hallway, Starling told Williams that the other man said the drugs were not good. Williams gave Starling \$5 and complained that Starling knew that the wink meant the drugs he gave Starling were not good and Starling acknowledged that he knew this.

¹ All further statutory references are to the Penal Code unless noted otherwise.

Starling then asked Williams if anyone had crack cocaine. Williams replied that he did and after smoking some together, they each went their own way.

Approximately 90 minutes later, Williams returned to the hallway to smoke crack cocaine again and saw Starling there. Starling told Williams, “Hey, man, are you going to look out for your boy?” Williams again smoked some of his crack cocaine with Starling. Approximately two and a half hours later, Starling again asked Williams for crack cocaine and Williams gave him a little more. Sometime after dark, Williams encountered Starling as he exited a hallway into the motel’s south parking lot. This time after greeting each other, Williams told Starling, “I can’t keep feeding you ... [e]very time I see you.” Starling then went into his car and smoked something. A short time later, Williams again saw Starling in his car “taking a hit,” but he did not talk to him.

Later that night, Williams rode his bicycle to a palm tree at the southeast corner of the motel where his friend, Debra Lejander, and several other people had gathered. Shortly before 11:30 p.m., as Williams was laughing and talking with other people by the palm tree, Starling came up and gave Williams a look that indicated to Williams that he was not happy. Starling then went into a hallway located near the palm tree and returned within seconds holding a gun. As Williams attempted to peddle away northbound he heard Starling say, “You think I’m playing?” He then heard a loud sound and fell to the ground with a bullet wound to the neck.²

Bakersfield Police Officer John Billdt was the first officer to arrive on the scene. Williams’s level of consciousness would rise and fall as Officer Billdt repeatedly asked

² Lejander testified she first saw that Starling had a gun when she saw Starling point it at Williams’s back as he told Williams he wanted his \$15. She then saw Starling move to one side of Williams and shoot him. Starling then walked away toward the east side of the motel.

Williams who shot him. Eventually, Williams told the officer that Starling shot him. Officer Billdt interviewed Lejander and she also identified Starling as the shooter.

Officer Kenneth Sporer rode to the hospital in an ambulance with Williams. En route, Williams again identified Starling as the person who shot him. Additionally, Williams and Lejander were each shown a photo lineup and each picked Starling out of the lineup as the person who shot Williams.

The bullet that struck Williams on his neck damaged Williams's spinal cord and left him paralyzed from the chest down.

On November 28, 2011, the district attorney filed an information that charged Starling with a third prior prison term enhancement in addition to the charges Starling was convicted of and the enhancements and allegations that were found true.

On March 22, 2012, the jury reached its verdict in this matter and the court found true the previously noted enhancements and allegations.

On March 26, 2012, defense counsel filed a *Romero*³ motion asking the court to strike Starling's prior strike conviction.

On April 23, 2012, Starling filed a *Marsden*⁴ motion, which the court denied following an in camera hearing.

On June 4, 2012, defense counsel filed a motion for a new trial.

On July 6, 2012, after denying Starling's *Romero* motion and motion for a new trial, the court sentenced Starling to an aggregate indeterminate term of 46 years to life consisting of: (1) In count 1, an indeterminate term of 14 years to life on his attempted murder conviction, an indeterminate term of 25 years to life on one arming enhancement, a five-year serious felony enhancement, and two consecutive one-year prior prison term

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

enhancements; (2) In count 2, a stayed, aggregate determinate term of 28 years⁵; and (3) In count 3, a stayed doubled upper term of six years.

Starling's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) However, in a document filed August 29, 2013, Starling appears to contend that the *Wende* brief filed by appellate counsel is unconstitutional under the state and federal constitutions because it forces him to represent himself, which he cannot effectively do because of his incarceration. We summarily reject this contention because in *Wende*, the Supreme Court authorized the procedure followed by appellate counsel in filing a brief that raises no issues and we are bound by the decisions of the Supreme Court. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450.)

Starling also submits the following "issues" for consideration: (1) a "speedy trial issue due to trial counsel repeatedly waiving time over [Starling's] objections"; (2) the denial of his motion for a new trial; (3) defense counsel's "failure to investigate non-favorable as well as favorable witnesses"; and (4) defense counsel's "failure to attack the credibility of witnesses[.]" We have considered these matters and find that none raise any reasonably arguable issues.

"The Sixth Amendment to the United States Constitution guarantees that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial' '[T]he right to a speedy trial is "fundamental" and is imposed by the Due Process Clause of the Fourteenth Amendment on the States.' [Citations.] The speedy trial guarantee 'is an important safeguard to prevent undue and oppressive incarceration prior to trial, to

⁵ A doubled, aggravated eight-year term on the substantive offense, a 10-year arming enhancement, a three-year great bodily injury enhancement, a five-year serious felony enhancement, and two one-year prior prison term enhancements.

minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.” (*People v. Williams* (2013) 58 Cal.4th 197, 232.)

However, because “the attorney is the [defendant’s] agent when acting, or failing to act, in furtherance of the litigation,” delay caused by the defendant’s counsel is also charged against the defendant. [Citation.]” (*Vermont v. Brillon* (2009) 556 U.S. 81, 90-91.) Consequently, the court did not violate Starling’s right to a speedy trial when it granted continuances requested by Starling’s defense counsel over Starling’s objections.

Further, there is no merit to Starling’s contention that defense counsel did not attack the credibility of any witnesses because she impeached three of the prosecution’s civilian witnesses, including Williams and Lejander, with some prior convictions. Additionally, Starling’s contention that defense counsel failed to investigate witnesses is not cognizable on appeal because it relies on facts outside the record. (*People v. Cooks* (1983) 141 Cal.App.3d 224, 310.) Moreover, since Starling does not raise any specific issues regarding the court’s ruling on his motion for a new trial, we note only that our review of the record disclosed that the court did not abuse its discretion when it denied the motion.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.