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

THE PEOPLE,

Plaintiff and Respondent,

v.

RUFUS MAXIMILLION HAYWOOD,

Defendant and Appellant.

F066721

(Kern Super. Ct. No. SF16481A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Larry Errea,
Judge.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

* Before Kane, Acting P.J., Franson, J., and Chittick, J.†

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

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INTRODUCTION

Appellant/defendant Rufus Maximillion Haywood pleaded no contest to the infliction of corporal injury on his wife, and was placed on probation pursuant to a negotiated disposition. While on probation, a felony complaint was filed which charged him with multiple offenses based on his impersonation of a law enforcement officer and repossession of a truck. Based on the new charges, it was alleged that he violated the terms and conditions of his probation by violating the law and committing new offenses. After a lengthy preliminary hearing, the court held defendant to answer on most of the new charges, and found he violated probation. The court revoked his probation and sentenced him to five years on the original corporal injury conviction, consistent with the terms of his negotiated plea.

On appeal, his appellate counsel has filed a brief which summarizes the facts, with citation to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Defendant has filed a letter with this court raising numerous issues. We will affirm.

FACTS

This appeal involves multiple unrelated cases which eventually formed the basis for the revocation of defendant's probation.

PART I

Conviction for Infliction of Corporal Injury

We begin with defendant's initial domestic violence case, for which he was placed on probation.²

² Given defendant's plea in this case, the following facts are from the preliminary hearing that was held in the domestic violence case.

On the afternoon of May 16, 2011, officers responded to a domestic violence call at the house where defendant lived with his wife, Jane Doe. They were parents of a one-year-old child. Ms. Doe told the officers that defendant had been cutting their child's hair and the child started to cry. Defendant became aggressive and pushed the child's head down, and the child continued to cry. Ms. Doe picked up the child and defendant hit her in the face with his open hand. Ms. Doe said defendant grabbed her face with his hand. She tried to get away, and he dug his nails into her face and neck. Ms. Doe said defendant repeatedly cursed her and said she was a "fucking whore" and "bitch."

An officer observed multiple scratches on both sides of Ms. Doe's neck. The officer also saw a bruise on her arm, which Ms. Doe said defendant inflicted on her a few days earlier, during a previous domestic violence incident.

Defendant was taken into custody that day. On the same day, the officers issued an emergency protective order to Ms. Doe and served it on defendant.

Shortly after defendant was arrested, Ms. Doe contacted officers and reported he was calling her from jail in violation of the emergency protective order. The officers checked the recorded calls from the jail, and confirmed defendant called her multiple times from May to December 2011.

The Charges

On January 17, 2012, an information was filed in the Superior Court of Kern County charging defendant with committing three offenses on May 16, 2011: count I, infliction of corporal injury on Jane Doe (Pen. Code, § 273.5, subd. (a)),³ with a prior conviction for infliction of corporal injury (§ 273.5, subd. (e)); count II, misdemeanor violation of a court order (§ 273.6, subd. (a)); and count III, willful harm to a minor (§ 273a, subd. (b)). He was also charged with count IV, violation of a court order between May 17 and November 26, 2011.

³ All further statutory citations are to the Penal Code unless otherwise indicated.

Plea and Probation

On March 6, 2012, defendant pleaded no contest to count I, infliction of corporal injury and admitted his prior conviction, pursuant to a negotiated disposition in which he would be placed on probation, ordered to attend anger management, and released on the day of the plea.

The court advised defendant that if he violated probation, his maximum exposure was five years in prison. The court granted the prosecution's motion to dismiss the remaining charges.

Defendant asked the court if he could file for divorce and move to Tulare County while he was on probation. The court and the prosecutor did not object, but the court advised defendant that the Tulare County Probation Department had to accept him. Defendant also asked if he could see his child. The court and the parties discussed the existing protective order. The court set the matter for a further hearing in family court.⁴

On June 7, 2012, the court conducted the sentencing hearing and placed defendant on formal probation for three years, on the condition he serve 441 days of that period in county jail. The terms and conditions included that defendant obey all laws and not commit new violations of law.

PART II

Defendant and Brian S.

The following incident was not related to the domestic violence case, but it was the basis for the prosecutor's decision to file criminal charges against defendant, and the

⁴ In his *Wende* letter to this court, defendant claims the courtroom speaker system was not working when he entered his plea and he did not understand the proceedings. The record demonstrates that he was completely aware of what was going on and engaged in the exchange about moving and visitation.

probation department's allegations that defendant violated probation by committing new violations of law.⁵

On August 16, 2012, defendant arrived in the neighborhood where 15-year-old Brian S. lived in Bakersfield with his mother and family. Defendant approached K.J. and Ashlyn G., who were walking on the street. He said he was a "bounty hunter" and asked if they had seen a bag that had been stolen from him. Ashlyn G. said Brian S. could have taken it and told defendant where Brian lived. Brian's neighbors told Brian and his mother about defendant's inquiries and said a bounty hunter was looking for him.

Later that evening, defendant drove up to Brian's house. Defendant's wife, Jane Doe, and their young child were in the car. Defendant was wearing an untucked shirt T-shirt that had holes at the bottom. Based on the neighbors' reports, Brian was standing on the porch and waiting for him. Defendant approached Brian and shined a flashlight in his face. Brian's mother, family, and neighbors were present.

Defendant said his name was Max.⁶ He accused Brian of stealing a black bag from him which contained flashlights, Motorola phones, walkie talkies and other things. Defendant said several people reported Brian stole the bag. Brian testified he did not steal the bag, and he told defendant he did not know anything about it and he did not take it.

Brian's mother testified defendant became angry and loud. Brian testified defendant "kind of got in my face." Brian got "mouthy" with defendant because he did not like people getting into his face. Brian yelled and cursed defendant. Defendant said he was going to take Brian to jail, and reached for handcuffs which were on his belt.

⁵ As we will explain below, the evidence about the Brian S. incident was introduced at the joint preliminary hearing/probation revocation hearing on the new charges filed in connection with this incident.

⁶ Defendant's full name is Rufus Maximillion Haywood.

Defendant turned Brian around, forcibly placed him in handcuffs with his arms behind his back, and dragged Brian off the front porch.

Brian testified defendant forcibly dragged and pushed him to his car, opened the backdoor, and told his mother, “ ‘You want me to take him to jail right now? I’ll take him to jail.’ ” Brian’s mother tried to talk to defendant. Defendant told his mother that Brian would end up in a boot camp for bad kids.

Brian testified defendant told him “about gangs and stuff, and he told me, ‘Out there, you can get shot in the back, and if I wanted to shoot you, I could shoot you.’ ” Defendant lifted his T-shirt and showed Brian he was carrying a “six-shooter” revolver on his hip. Brian believed it was a real gun.

Brian testified defendant pushed him under the car and conducted a patdown search. Brian pushed back and tried to get away. Brian and his mother both yelled at defendant to show them a badge. Defendant replied, “ ‘If it comes down to it ... I’ll show you my badge if I need to.’ ”

After defendant had been there for 35 to 40 minutes, Brian’s mother said she was going to call the police. Defendant removed the handcuffs from Brian and left. Brian’s mother was scared and believed defendant was a member of law enforcement.⁷

On August 17, 2012, defendant was arrested because of the incident with Brian S.

Probation Violation Notice

Based on the Brian S. incident, the Kern County Probation Department sent a letter to the superior court on August 22, 2012, stating defendant had violated his formal probation by committing a new violation of law.

⁷ Defendant’s then wife, Jane Doe, who had been the victim in the domestic violence case, testified at the preliminary hearing that defendant believed Brian had stolen his bag from his car. She testified defendant never claimed he was an officer, he never yelled at Brian and his mother, Brian yelled and cursed at defendant, and defendant tried to counsel Brian to calm down.

PART III

Defendant and the Bicyclists

On the morning of September 21, 2012, Katherine Soren and her boyfriend were riding their bicycles adjacent to the curb on a street in Bakersfield. A large SUV drove behind them, and it was honking and traveling at a high rate of speed. The vehicle's passenger-side door mirror hit Soren, she lost control of her bicycle, and she crashed. Soren suffered abrasions and bruises on her knee and elbow. The bicycle's handlebars and front tire were bent.

Soren's boyfriend shouted at the driver, but the vehicle accelerated, it never stopped, and it left the scene. Soren's boyfriend raced after the vehicle to get the license plate. Both Soren and her boyfriend later identified defendant as the driver.

Based on this incident, defendant was not charged with committing any offenses, but the evidence was introduced at the joint preliminary hearing/probation revocation hearing as an uncharged offense.

PART IV

Defendant and Natalie Pinkins's Truck

The primary incident which formed the basis for revocation of defendant's probation was based on yet another bizarre incident where defendant falsely claimed to be a law enforcement officer, in the course of his employment as a repossession agent for a car dealer.⁸

As of September 2012, defendant was the "loss prevention officer" for the "Good Guys Tire Outlet" in Bakersfield, which also sold cars. Michael Stuart, defendant's employer, testified defendant handled any customers who failed to make car payments. If a customer was 60 to 90 days behind, Stuart gave the name to defendant and directed

⁸ The evidence about this incident was also introduced at the joint preliminary hearing/probation revocation hearing on the new complaint filed in the Brian S. case.

him to “make some contact to try to get a payment.” Stuart testified defendant was authorized to repossess vehicles. However, defendant was not trained to identify himself as an officer or go into a home to look for car keys. He was authorized to accept payment in lieu of repossessing the car if the customer wanted to “try and make resolution there.”

Stuart testified defendant only had “brief” training, and he did “some studying on his own, the laws. He got back with me, and we talked about what he knew, what he could do, what we couldn’t do. He knows – he knew the laws pretty good, to my understanding.” Defendant told Stuart that he could “go to the house, make contact, nothing is to be opened – no gates, no doors, and you know, need to be done peacefully. If not, he was instructed to leave, which he would always do. We never had a problem.”

Natalie Pinkins purchased a Dodge truck from Stuart in January 2012. She made a partial down payment and one full payment between the purchase date and September 27, 2012. Stuart gave Pinkins’s name to defendant and directed him to “make contact with her, any way possible. I guess her number had changed; so he made contact at the residence.”

Defendant Arrives at Pinkins’s Residence

Around 8:30 p.m. on September 27, 2012, defendant arrived at Pinkins’s house in Buttonwillow. Ms. Pinkins and her daughter were at a fair in Bakersfield. Ms. Pinkins’s son, 16-year-old Andre J., and his teenage friend were home.

Defendant knocked on the door. Andre J. and his friend stepped outside and talked to defendant. Defendant did not identify himself as a repossession officer, and he did not identify his employer. He did not say anything about the amount due on the truck. Instead, defendant told Andre J. he was “Officer Haywood.” Defendant directed Andre J. to call his mother because he was there to repossess their Dodge truck.

Andre J. testified defendant wore a green suit and boots “like cops wear usually.” Defendant had a badge on his waist and carried pepper spray. Andre J. believed he was a police officer.

Defendant told Andre J. he wanted to talk to his mother and refused to share any information with Andre J. because he was a juvenile. Defendant said, “ ‘If I don’t get ahold of your mom in the next 15 minutes, I’m taking the truck.’ ”

Andre J. gave his mother’s cell phone number to defendant. Andre J. testified defendant stayed outside and called his mother, but he walked away, and Andre J. could not hear the conversation.

Andre J. tried to call his mother from the house phone, but it didn’t work. Andre J. later used defendant’s phone and spoke to his mother. Andre J. told Pinkins that some guy was at the house saying he was going to take the truck. Andre J. also contacted his sister, who was with their mother, and told her what was going on at the house.

Defendant Calls Pinkins

Pinkins, Andre J.’s mother, testified defendant called and left a voicemail message on her cell phone.⁹ In the message, defendant said he was “Officer H[a]ywood,” that he was at her house, and he wanted to speak to her about a Dodge truck. He asked her to call him back in five minutes. Defendant said he was with her son, Andre J., and another juvenile.

Pinkins testified she was behind in her car payments, but she did not think her vehicle was subject to repossession. She called defendant back. Defendant told Pinkins he was going to repossess her Dodge truck unless she paid him. Pinkins believed he was an officer, but she never gave him permission to enter the house or look for the truck keys.

Defendant Walks into the House

In the meantime, Andre J.’s 14-year-old brother, Brandon T., walked up to the house. Defendant asked Andre J. to identify Brandon T. Andre J. said Brandon T. was

⁹ Pinkins saved the recorded voicemail message, and it was played for the court at defendant’s preliminary hearing.

his brother. Defendant ordered Andre J., Brandon T., and their friend to go into the house. Brandon T. asked defendant who he was. Defendant told Brandon T. to go into the house. The minors went into the house because they believed defendant was an officer.

Defendant also said he was going into the house, and walked inside without permission from Andre J. Defendant asked Andre J. if there were spare keys. Andre J. said no. Defendant opened kitchen drawers and looked for keys. At some point, defendant said he was a bail bond agent. Andre J. continued to believe defendant was an officer.

Andre J. testified defendant repeatedly went outside to make cell phone calls. The three boys took advantage of this opportunity and walked out of the house. Each time, however, defendant told them to go back inside, and he also returned into the house with them.

Andre J.'s friend asked defendant what his job was. Defendant replied, " 'I can arrest anybody who gets in my way.' " Defendant told Brandon T., "I have already arrested people, and like many people that have been breaking in and in gangs." Brandon T. was afraid of defendant and believed he was an officer. Brandon T. thought defendant was threatening to arrest him and also thought he could not go outside because defendant told him to stay in the house.

Pinkins Calls 911

After speaking to defendant on her cell phone, Pinkins called 911 and told the operator that someone was at her house, that he was trying to repossess her truck, and she did not believe he was legitimate. Pinkins said the man claimed she owed \$1,200 on the truck. Pinkins said she told the man that was not true. She did not owe that much money, and she did not have that much money. The man said he would accept \$600 in a postdated check. Pinkins told the man she just had \$400, and the man said he would take it in a postdated check or he would tow her truck.

The 911 operator told Pinkins that a repossession agent could not take cash. The operator asked for his location. Pinkins gave her home address in Buttonwillow and said the man was inside her house with her kids. The man was telling her kids that he could arrest them and asked them if they drank or used drugs. Pinkins said the man was repeatedly calling her, and she promised she was heading to her house. The man told her to stay in Bakersfield, and he would tow the truck and return it to her in exchange for the money. Pinkins said the man spoke as if he had “the upper hand because he is taking the car. And he said listen to me listen to me ... he said I’m an agent, I’m an agent and all this other stuff.” The man kept threatening to call the tow truck to her house. Pinkins told the man that it did not make sense since she was on her way home.

The operator again told Pinkins that a repossession agent could not take cash, and he would be stealing money from her. The operator said law enforcement officers were responding to her house.

Defendant Tows the Truck

Andre J. testified defendant stayed at his house for about three hours. Around 11:30 p.m., a tow truck arrived and defendant had Pinkins’s truck towed away. Defendant left before the police arrived at the house.

Andre J. told Ms. Pinkins that defendant towed the truck, and said he would meet her at the “Good Guys” car dealership parking lot in Bakersfield to get paid. Pinkins called 911 again and reported what had happened. Pinkins asked the operator whether the man needed legal documents to repossess the truck, and the operator said yes.

Sometime after 11:30 p.m., Pinkins met defendant at the car dealer’s parking lot. Defendant said he was a “[r]epossession officer” and “bounty hunter.” Pinkins gave defendant \$400 cash and a postdated check, and she regained possession of her truck. The police arrived at the scene, reviewed the sales contracts, and said the company had the right to repossess the truck.

On October 1, 2012, defendant was arrested for the incident at Pinkins’s house.

PROCEDURAL HISTORY

On October 12, 2012, an amended complaint was filed which charged defendant with committing several offenses at Pinkins's house on September 27, 2012: count I, kidnapping of Andre J. and Brandon T. (§ 207, subd. (a)); count II, false imprisonment of Andre J. and Brandon T. (§ 236); count III, first degree burglary of Pinkins's house (§ 460, subd. (a)); counts IV, V, and VI, false representation of an officer (§ 146a, subd. (b)(1)); count VII, extortion (§ 518); and count VIII, obtaining money by false pretenses (§ 532);

Defendant was also charged with committing the following offenses against Brian S. on August 16, 2012: count IX, kidnapping of Brian S.; count X, false imprisonment of Brian S.; counts XI and XII, false representation of an officer; and count XIII, felon in possession of a firearm with a prior domestic violence conviction (§ 29800, subd. (a)(1)). It was also alleged defendant committed the offenses while he was on bail.

Probation Violation Notice

On or about October 22, 2012, the Kern County Probation Department filed a notice that defendant committed another violation of probation based on the incident with Pinkins and the truck.

Joint Preliminary Hearing/Probation Revocation Hearing

On December 12 and 17, 2012, the court conducted a preliminary hearing on the newly filed charges involving Brian S. and Pinkins. The court advised the parties that it would first address the preliminary hearing issues on the complaint, and then it would consider the probation violation allegations. The witnesses at the preliminary hearing included Brian, his mother and their neighbors; and Andre J., Brandon T., Pinkins, and defendant's employer. Soren and her boyfriend also testified about the uncharged incident when defendant hit Soren and drove away.

After the parties rested, the prosecutor moved to dismiss certain counts for lack of evidence: count VI, one of the false representation charges, count VII, extortion, and

count VIII, obtaining money by false pretenses; and the on-bail enhancements alleged with the Brian S. charges.

As for the remaining charges, defense counsel vigorously argued the prosecution had overcharged defendant in the two cases; that defendant had performed a lawful citizen's arrest on Brian S. because he reasonably believed Brian stole his property; that he calmly counseled Brian when Brian became out of control; that defendant acted appropriately to repossess the truck; and he did not kidnap the boys when they were in the house. The prosecutor responded that defendant falsely identified himself as an officer in both cases; that he forcibly handcuffed Brian S. and displayed a gun; that he entered Pinkins' house and searched for the keys without permission; and he ordered the boys to stay inside the house without any lawful authority.

The court held defendant to answer for counts I through V based on the Pinkins case, with the on-bail enhancements, and on the remaining Brian S. counts.

The court turned to the probation revocation allegations. It found the allegations were sufficiently supported and proven based on the evidence from the preliminary hearing, that defendant committed new violations of law. The court also found Soren's testimony established defendant committed a hit-and-run violation of the Vehicle Code, which had not been charged in the complaint but constituted another probation violation. The court ordered defendant remanded for the probation violation without bail.

Sentencing Hearing

On January 15, 2013, the court conducted the sentencing hearing for the probation violation. The court found five circumstances in aggravation and sentenced defendant to the upper term of five years on his original conviction for infliction of corporal injury, consistent with the terms of the negotiated plea.

On February 13, 2013, defendant filed a timely notice of appeal, limited to the "contested violation of probation." His notice did not raise the validity of his original plea, and he did not request or receive a certificate of probable cause.

DISCUSSION

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on July 15, 2013, we invited defendant to submit additional briefing.

On September 18, 2013, defendant submitted a 12-page letter to this court raising several issues about his original plea, the preliminary hearing, and the probation revocation. As we will explain, these issues are meritless.

A. Defendant's Plea

In his letter to this court, defendant raises several issues about his original no-contest plea to infliction of corporal injury. Defendant contends the prosecutor coerced his no-contest plea by fear and intimidation; the prosecutor and threatened him with a potential nine-year term; defense counsel failed to explain the terms of the plea bargain and that it included five-year prison term if he violated probation; the courtroom speakers did not work properly and he did not hear what was going on at the plea hearing; and he wanted to withdraw his plea, but his defense counsel told him not to.

Defendant is foreclosed from raising these issues on appeal. He did not file a notice of appeal after he entered his plea and the court placed him on probation. He filed a notice of appeal after he was found in violation of probation, and his notice was specifically limited to the court's decision to revoke probation after it heard the evidence at the preliminary hearing regarding the Brian S. and Pinkins matters. He has not preserved appellate review of matters based on his no contest plea. (See, e.g., *People v. Manriquez* (1993) 18 Cal.App.4th 1167, 1170–1171.)

In any event, defendant's contentions are not supported by the record before this court. There is no evidence he was coerced, threatened, or intimidated to enter into the plea. The court specifically advised him that his maximum exposure was five years in prison, and there is no evidence the courtroom speakers were not working properly.

Indeed, defendant engaged in an extended discussion with the court at both the plea and sentencing hearings, indicating that he could hear the proceedings. There is no evidence that he tried to withdraw his plea for any reason.

1. The Marsden¹⁰ hearing

Defendant claims the prosecutor committed misconduct because he was threatened with the erroneous statement that he faced nine years in prison for the domestic violence charges. Defendant also claims defense counsel failed to advise him of all plea offers. These contentions are meritless and were addressed and resolved at a *Marsden* hearing which was held on January 11, 2012, before defendant entered his no contest plea in the domestic violence case.

During the *Marsden* hearing, defendant complained his appointed counsel did not investigate or prepare for the domestic violence case. Defendant also complained the prosecutor misrepresented his potential exposure by making an initial offer of nine years, he never faced nine years on the domestic violence charges, and his attorney never corrected the error. Defense counsel agreed the prosecutor's initial offer was for nine years and defendant's exposure was not nine years. Counsel said he did not pressure defendant to take the deal and there was no "downside" to the prosecutor's error since defendant did not accept the offer.

The court denied defendant's *Marsden* motion, but stated it was going to ask the prosecutor to clarify defendant's maximum exposure on the charged offenses and the existing plea offer. After the proceedings resumed, the court asked the prosecutor to clarify defendant's maximum exposure on the domestic violence charges. The prosecutor replied that defendant faced five years in state prison. The prosecutor also explained he made an offer for defendant to plead guilty to the felony charge for the lower term of two years, and he would be placed on probation and ordered to attend domestic violence and

¹⁰ *People v. Marsden*(1970) 2 Cal.3d 118 (*Marsden*)

mental health counseling. The prosecutor said defendant rejected the offer. The court asked defendant if he knew about and rejected the two-year offer, and defendant said yes. The court confirmed the matter for the preliminary hearing.

On January 17, 2012, the court conducted the preliminary hearing in the domestic violence case and held defendant to answer. On March 6, 2012, defendant pleaded no contest pursuant to the prosecution's latest offer to felony infliction of corporal injury and admitted his prior conviction, and that he would be placed on probation and face a maximum exposure of five years.

Our review of the *Marsden* record thus demonstrates the prosecutor did not threaten or coerce defendant, and defendant was aware of all offers before he entered his no-contest plea with the maximum exposure of five years in prison.

We conclude that even if defendant's issues about his no contest plea were cognizable, his contentions are not meritorious.

B. The Preliminary Hearing/Probation Revocation Hearing

Defendant's *Wende* letter raises numerous issues about the court's conduct of the preliminary hearing for the charges filed in the Brian S. and Pinkins cases, and the court's decision to revoke probation and impose the five-year prison term from the domestic violence plea. Defendant requests this court to join a writ of habeas corpus with this appeal, and appoint an attorney to handle his writ. As we will explain, defendant's issues are meritless.

Defendant begins with several claims of ineffective assistance by his defense attorney at the preliminary hearing and probation revocation hearing. "In order to demonstrate ineffective assistance, a defendant must first show counsel's performance was deficient because the representation fell below an objective standard of reasonableness under prevailing professional norms. [Citation.] Second, he must show prejudice flowing from counsel's performance or lack thereof. Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. [Citation.]” (*People v. Williams* (1997) 16 Cal.4th 153, 214-215.)

Defendant claims defense counsel never gave him the opportunity to review the “probation file”; defendant did not have sufficient time to confer with his attorney; his attorney did not tell him about all the potential evidence against him; and his attorney did not have sufficient experience to represent him at the probation revocation hearing. There is no evidence in the record to support any of these allegations, or that defendant suffered prejudice. There is similarly no evidence to support defendant’s claim that the prosecutor failed to provide a witness list to defense counsel.

Defendant argues defense counsel failed to ask the court to remove defendant’s restraints at the preliminary hearing, and the restraints tainted the witnesses’ identification of him. There is no evidence defendant was restrained, the type of restraints which might have been used, or that the restraints might have tainted the witnesses’ testimony. Moreover, defendant never challenged the testimony from Brian S. and the Pinkins’ family that he was the person who contacted them. Indeed, defendant’s wife confirmed he confronted Brian S., and his employer confirmed that he asked defendant to contact Pinkins.

Defendant claims defense counsel should have called his probation officer to testify that he knew defendant was employed as a “loss prevention officer” for the car dealer and he was authorized to use handcuffs and “a loss prevention” shield; defense counsel failed to introduce evidence that defendant conducted a lawful citizen’s arrest of Brian S.; and counsel failed to introduce evidence that defendant was legally authorized to repossess Pinkins’s truck

While Pinkins and her children may have been confused about defendant’s role, there was no dispute that defendant was employed by the car dealer to repossess cars. Thus, his probation officer’s knowledge of his employment was not relevant. Indeed, the

probation revocation allegations were not based on defendant's employment but whether he committed new violations of law while on probation. The disputed issues were whether defendant exceeded the scope of his duties as a repossession agent when he confronted Pinkins and her children: whether he falsely claimed to be a law enforcement officer, he entered and searched her house without legal authority or valid consent, and he forced the children to remain in the house against their will.

As for the Brian S. case, defense counsel argued defendant tried to commit a citizen's arrest on Brian S., and defendant's then-wife offered a different scenario of the events. His probation officer's knowledge about whether defendant was authorized to carry handcuffs and badge were irrelevant to the disputed issues: whether defendant falsely claimed to be a law enforcement officer, forcibly handcuffed Brian S., displayed a gun to Brian S. and his mother, threatened them, illegally searched Brian S., and threatened to take him into some type of custody.

Defendant argues his probation officer would have testified that Pinkins repeatedly called the officer to have defendant arrested, to show she was being vindictive against him. However, defense counsel ably cross-examined Pinkins about her motives, whether she failed to make payments on the truck, and raised the inference that she was exaggerating defendant's actions to avoid her financial responsibilities.

Defendant claims defense counsel should have taken steps to preserve the testimony of a certain witness who was present at Pinkins's house and would have refuted all the allegations, but he died before the preliminary hearing. Defendant identifies this witness in his narrative letter but there is nothing on the record to support his claims about this witness's presence or what he might have testified about.

Defendant complains defense counsel failed to let defendant "be heard" at the probation revocation hearing. There is no evidence that defendant wanted to testify at the joint preliminary/probation revocation hearing or that defense counsel prevented him from doing so.

Defendant claims defense counsel never gave any arguments on defendant's behalf or challenged the witnesses' credibility; and counsel did not offer mitigating evidence at the preliminary hearing or argue for a lesser sentence at the sentencing hearing. To the contrary, defense counsel extensively cross-examined the prosecution witnesses. Counsel offered a lengthy argument at the conclusion of the joint preliminary/probation revocation hearing that the prosecutor overcharged the case, defendant did not violate any laws when he contacted Brian S. and Pinkins's family, and at the most he might have committed misdemeanor offenses. As a result of defense counsel's efforts, the prosecutor conceded that some of the offenses should be dismissed. The court dismissed several of the charges and enhancements but held defendant to answer on the majority of the charges and found he violated probation by committing new offenses.

Defendant raises two related issues as to the revocation of probation: that defense counsel did not properly address the probation revocation allegations; and counsel should have moved to continue the probation revocation hearing until the trial was held on the criminal charges in the Brian S. and Pinkins cases.

Defendant's arguments are based on a misapprehension of the probation revocation procedures. "Section 1203.2, subdivision (a), authorizes a court to revoke probation if the interests of justice so require and the court, in its judgment, has reason to believe that the person has violated any of the conditions of his or her probation. [Citation.] ' "When the evidence shows that a defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period. [Citations.]" [Citation.]' [Citation.] The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. [Citations.] 'Probation revocation proceedings are not a part of a criminal prosecution, and the trial court has broad discretion in determining whether the probationer has violated probation.' [Citation.]" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772, fn. omitted.)

“ ‘The discretion of the court to revoke probation is analogous to its power to grant the probation, and the court’s discretion will not be disturbed in the absence of a showing of abusive or arbitrary action. [Citations.]’ [Citation.] ‘Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense. [Citation.]’ [Citation.] ‘ “[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation....” ’ [Citation.] And the burden of demonstrating an abuse of the trial court’s discretion rests squarely on the defendant. [Citation.]” (*People v. Urke, supra*, 197 Cal.App.4th at p. 773.)

After the lengthy preliminary hearing, where defendant had the opportunity to confront and cross-examine witnesses and present evidence, the prosecution had clearly established by a preponderance of the evidence that defendant violated probation by committing new offenses in the Brian S. and Pinkins cases. Based on the record before this court, defense counsel did not render ineffective assistance, defendant did not suffer any prejudice from the manner in which counsel represented him, and the court did not abuse its discretion when it found defendant violated probation by committing new offenses.

Finally, defendant raises two issues about the court’s imposition of the five-year prison term for the probation violation. Defendant complains the court failed to state reasons for imposing the five-year term. However, the court found circumstances in aggravation which supported the upper term of five years, consistent with the plea agreement.

Defendant also claims defense counsel should have urged the court to impose the lower term, consistent with the prosecution’s original plea offer of two years in the domestic violence case. As explained above, the prosecutor advised the court in the course of the domestic violence case that his original offer was for two years and defendant rejected it. After the preliminary hearing in the domestic violence case, the

prosecutor offered five years and defendant accepted it. The court specifically advised defendant when he entered the no contest plea for felony infliction of corporal injury that he was going to be placed on probation but his maximum prison exposure was five years. At the sentencing hearing for the probation violation and revocation, the court was not bound to sentence defendant pursuant to any preexisting plea negotiations which he rejected during the domestic violence case.

After further independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed. Defendant's request for appointment of counsel to file a petition for writ of habeas corpus is denied.