

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVELLE BUCKWHEAT JOHNSON,

Defendant and Appellant.

F067382

(Kern Super. Ct. No. MF010412A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. John D. Oglesby, Judge.

Francine R. Tone, under appointment by the Court of Appeal, for Defendant and Appellant.

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

-ooOoo-

---

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

## **INTRODUCTION**

Appellant/defendant Davelle Buckwheat Johnson pleaded no contest to battery by an inmate on a correctional officer (Pen. Code, § 4501.5)<sup>1</sup> and was sentenced to four years, consecutive to the term he was already serving in prison. On appeal, his 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. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*.) We affirm.

## **FACTS**

On January 30, 2011, defendant was a custodial inmate and hit a guard “on what might be characterized as [a] less deliberate of a strike on the officer in some sort of melee of flailing arms while being taken back into custody ....”

### **Procedural History**

On or about February 1, 2013, an amended felony complaint was filed in the Superior Court of Kern County that charged defendant with count I, battery on a correctional officer by a person confined in a state prison, with a prior strike conviction (§667, subds. (b)-(i)) and two prior prison term enhancements (§ 667.5, subd. (b)).

On March 1, 2013, defendant pleaded no contest and admitted the special allegations pursuant to a negotiated disposition for a maximum term of four years.

On March 28, 2013, the court sentenced defendant to the lower term of two years, doubled to four years as the second strike term, to be served fully consecutive to the sentence he was already serving. The court dismissed the two prior prison term enhancements.

On May 28, 2013, defendant filed a timely notice of appeal, and the court granted his request for a certificate of probable cause.

---

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

### **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 October 7, 2013, we invited defendant to submit additional briefing. To date, he has not done so.

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

### **DISPOSITION**

The judgment is affirmed.