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

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG PAUL BUCHANAN,

Defendant and Appellant.

F069996

(Super. Ct. No. 14CM7124)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

John K. Cotter, 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 Gomes, Acting P.J., Poochigian, J. and Franson, J.

A jury convicted appellant Craig Paul Buchanan of unlawful possession of a sharp instrument by an inmate (Pen. Code, § 4502(a)).¹ In a separate proceeding, Buchanan admitted an allegation that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On November 29, 2013, at around noon, a mass cell search was conducted at Building 4A1 at Corcoran State Prison. During the search, the inmates housed there were subject to an unclothed body search and removed from the housing unit while their cells were searched.

Correctional Officers Patrick Herleman and J. Staggs searched cell 56, whose sole occupant was Buchanan. As Officer Staggs searched the bunk area, Officer Herleman searched the upper area of the cell. In caulking located above one corner of the cell door, where two pieces of concrete join, Officer Herleman saw a string hanging out of a hole measuring approximately a quarter-inch wide by a half-inch long. He shined his flashlight on the hole and saw that the string had a small loop in it. Officer Herleman pulled on the string and nothing happened. He put his head closer to the wall, looked in the hole, and saw the sharpened tip of an object inside.

Officer Herleman notified Sergeant Craig Risvold. After viewing the object, Sergeant Risvold notified his immediate supervisor and they notified maintenance. Two maintenance workers went to the cell, dug out some of the caulking and a metal object fell to the ground. The object was four inches long, approximately a quarter-inch wide by an eighth of an inch thick, and was sharpened at both ends.

¹ All further statutory references are to the Penal Code.

On May 15, 2014, the district attorney filed an information charging Buchanan with a single count of possession of a sharpened object by an inmate, and with having three prior convictions within the meaning of the three strikes law.

On July 14, 2014, a jury trial in this matter began. On July 15, 2014, while the jury was deliberating, Buchanan admitted having suffered one of the alleged prior strike convictions in exchange for the dismissal of the two remaining strike convictions. Later that day, the jury convicted Buchanan of the substantive offense.

On August 24, 2014, the court sentenced Buchanan to an aggregate eight-year term: a six-year term (the doubled middle term of three years) on Buchanan's unrelated 2000 conviction for battery by a prisoner (§ 4501.1, subd. (a)) and a consecutive two-year term (a doubled one-third the middle term of three years) on the instant offense. The court imposed this aggregate term consecutive to the 25-years-to-life term Buchanan was serving on his 1989 conviction for assault with a deadly weapon on a police officer when he committed the two above noted in-prison offenses (§ 1170.1, subd. (c)).

Buchanan's appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a document filed on February 20, 2015, Buchanan contends his defense counsel provided ineffective representation because he: (1) refused to present witnesses on Buchanan's behalf; (2) refused to present evidence that Sergeant Risvold committed perjury when Risvold testified that he did not know Buchanan and that Risvold testified against Buchanan in retaliation for Buchanan using the prison's appeal process; (3) advised Buchanan not to testify because the district attorney would have his testimony stricken based on Buchanan's "lifer status"; (4) did not honor Buchanan's request to have an investigator take pictures of the crime scene; and (5) acknowledged to the jury that Buchanan was serving a life sentence.

Buchanan's first four contentions are not cognizable on appeal because they rely on facts outside the record. (*People v. Neilson* (2007) 154 Cal.App.4th 1529, 1534 ["An appellate court's review is limited to consideration of the matters contained in the appellate record"].) Additionally, Buchanan's claim that Sergeant Risvold testified he did not know Buchanan and that defense counsel acknowledged to the jury that Buchanan was serving a life sentence, are not supported by the record.

Buchanan further contends that Correctional Officer Sammy Ponce committed perjury during his testimony because he did not work the shift during which the search occurred. However, since Officer Ponce did not testify regarding any details of the November 29, 2013 search of Buchanan's cell he could not, as Buchanan suggests, have committed perjury with respect to those details.

Buchanan also contends his appellate counsel provided ineffective representation because he filed a *Wende* brief, and he did not provide Buchanan with minute orders and transcripts Buchanan requested. Appellate counsel did not provide ineffective representation simply because he filed a *Wende* brief. (Cf. *In re Kevin S.* (2003) 113 Cal.App.4th 97, 119 [counsel properly filed *Wende* brief when she was unable to discern any reasonably arguable contentions].) Buchanan's claim that appellate counsel did not provide him with minute orders and transcripts is not cognizable because it relies on facts outside the record and, in any event, it does not raise any issues that impeach the jury's guilty verdict.

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

DISPOSITION

The judgment is affirmed.²

² Buchanan also requests appointment of new appellate counsel. His request is denied.