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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR MORONI LEAL,

Defendant and Appellant.

G052146

(Super. Ct. No. 14HF3134)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

A jury convicted Victor Moroni Leal of several offenses involving domestic violence that occurred on four separate occasions. The trial court imposed a seven-year prison sentence. Leal appealed, and his appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, but raised no specific issues, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating he thoroughly reviewed the record. Counsel advised Leal he would file a *Wende* brief, and he provided him with a copy of the brief. He also advised Leal he could personally file a supplemental brief on his own behalf raising any issues he believed worthy of consideration, and provided Leal a copy of the appellate record. Counsel did not argue against his client or offer an opinion on the merits of the appeal. He informed Leal he could ask the court to relieve him as counsel. We gave Leal 30 days to file a supplemental brief, but he has not responded. We have reviewed the record, found no arguable issues, and therefore affirm the judgment.

#### FACTS AND PROCEDURAL HISTORY

In January 2015, the Orange County District Attorney filed an information alleging Leal committed felony domestic battery causing injury with a prior conviction (Pen. Code, § 273.5, subds. (a), (f)(1) [counts 1-2, 4], all statutory references are to the Penal Code unless noted), misdemeanor domestic violence battery (§ 243, subd. (e)(1) [count 3], felony battery with serious bodily injury (§ 243, subd. (d) [count 5]), and misdemeanor violation of a protective order (§ 166, subd. (c)(1) [count 6]). The complaint also alleged Leal inflicted great bodily injury in connection with count 4 (§ 12022.7, subd. (e)), and served two separate terms of incarceration within the meaning of section 667.5, subdivision (b).

At trial in April 2015, Elizabeth L. testified she shared an Irvine apartment with Leal, who was her boyfriend. She supported him financially and they frequently argued about money.

On February 8, 2014, the couple argued when Leal wanted Elizabeth to give him a credit card. Leal punched her, causing a blackened left eye. The argument resumed later when he struck or pushed her, causing her to fall and cut her forehead on the corner of a coffee table. Leal pleaded guilty to misdemeanor cohabitant abuse (§ 273.5) in April 2014. The trial court admitted this evidence under Evidence Code section 1109 as an uncharged act of domestic violence admissible to demonstrate Leal's propensity for such behavior.

On November 19, 2014 (count 2), Leal and Elizabeth argued about prepaid credit cards, and he jabbed or "bopped" her in the nose with the palm of his hand, causing her nose to bleed. On November 24 (count 1), Leal struck Elizabeth with a tablet computer on the top of her head during another argument about money. Her head wound required five stitches to close at a hospital.

On the morning of December 7, 2014 (count 3), they again argued about finances, and Leal sprayed milk and soda on her as she stood in the bathroom. He blocked her from leaving the bathroom, but she pushed past him as they brushed shoulders. She telephoned the police to have Leal removed from the apartment to prevent escalation of the dispute. She told a police officer Leal gave her a "shoulder check" and slammed her into the hallway wall or closet door. Authorities obtained a no contact restraining order against Leal requiring him to stay 100 yards away from Elizabeth. But they continued to live together.

On the afternoon of January 8, 2015 (count 4), Leal and Elizabeth again argued about finances and misplaced lottery tickets he thought were valuable. Elizabeth, who had consumed three beers that day, said she belittled Leal. He got "huffy" and puffed up his chest. She declined to back down or cower and stepped toward him. He

moved towards Elizabeth and pressed his chest against her. He tried to head butt her, but she moved aside. She apparently performed a leg sweep and knocked Leal down, and they began grappling on the floor. She attempted some punches but did not make contact. Leal got on top and straddled her, and attempted to choke her with his arm on her neck. He then punched her two or three times with a closed fist on her brow above her nose, drawing blood. Leal telephoned the police. Elizabeth told a police officer she repeatedly told Leal to get off of her, and she would not let go of his legs until he agreed to leave her alone because she feared something worse would happen if he had full control of his body. She described herself as a “bloody mess,” and an ambulance took her to the hospital. A doctor used a skin adhesive to close two lacerations on her forehead, and she suffered a swollen left eye and a blackened right eye. Elizabeth still had scars from the injuries.

Elizabeth, a former Marine, had received martial arts training. She was 5’1” tall and approximately 110 pounds at the time of the incidents. Leal was about 5’9” and heavier. She admitted at trial she still loved Leal, and claimed to have exaggerated details of the incidents to police officers.

The trial court granted the district attorney’s motion to dismiss count 5. The jury found Leal committed the remaining offenses, and also found he inflicted great bodily injury in the commission of domestic battery causing injury as charged in count 4. Leal waived his right to a jury, and the court found he suffered two prior convictions within the meaning of section 667.5, subdivision (b). In May 2015, the court declined to reduce the section 273.5 convictions to misdemeanors (§ 17, subd. (b)) or place Leal on probation, and imposed the four-year midterm for count 4, plus a three-year low term for the associated GBI enhancement. The court imposed concurrent terms for the other convictions, and dismissed the section 667.5 enhancements in the interests of justice.

## DISCUSSION

Following *Wende* guidelines, we have reviewed counsel's brief and the appellate record and discern no arguable issue. This includes counsel's suggestion we consider whether the trial court abused its discretion by declining to place Leal on probation or impose the low term sentence on count 4. Leal has not availed himself of the opportunity to file a supplemental brief (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding]), nor has he requested to have appellate counsel relieved. We therefore affirm the judgment. (*Wende, supra*, 25 Cal.3d at p. 443.)

## DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.