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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ALEX M., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX M.,

Defendant and Appellant.

G052647

(Super. Ct. No. DL048314)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Fred W. Slaughter, Judge. Affirmed.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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The juvenile court found minor Alex M. (born in July 2001) committed misdemeanor battery and obstructed a law enforcement officer in the performance of the officer's duties, and ordered him to serve 60 days in a juvenile institution. Minor 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 read the entire record. He discussed his findings and views concerning the case with minor through correspondence. He advised minor concerning the nature of a *Wende* brief, served a copy of the brief on minor, and advised minor he could personally file a supplemental opening brief raising any issues he chose to call to the court's attention. He also advised minor he would send him a copy of the record to aid in preparation of a supplemental brief, and he remained available to brief issues as requested by the court. He also advised minor he could request the court to relieve him as counsel. Counsel did not argue against his client or offer an opinion on the merits of the appeal. We notified minor counsel filed a *Wende* brief and gave him 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 August 2015, the Orange County District Attorney filed a subsequent petition<sup>1</sup> alleging minor committed misdemeanor battery (Pen. Code, § 242) and resisted

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<sup>1</sup> Minor had suffered several prior sustained petitions. A petition filed in October 2014 alleged he committed misdemeanor vandalism (Pen. Code, § 594, subs. (a) & (b)(2)(A)) on April 14, 2014. A second petition filed in October 2014 alleged minor committed felony vandalism (Pen. Code, § 594, subs. (a) & (b)(1)) on April 17, 2014. A third petition filed in October 2014 alleged minor committed first degree residential burglary (§ 459, 460, subd. (a)) and misdemeanor petty theft (§§ 484, subd. (a), 488) on September 2, 2014. In January 2015, minor waived his rights, admitted the vandalism and petty theft offenses, and the prosecutor dismissed the burglary allegation.

or obstructed a peace officer who was discharging his duties (Pen. Code, § 148, subd. (a)(1)). At the jurisdictional hearing in September 2015, Juan Madrigal, a juvenile corrections officer and sworn peace officer employed by the Orange County Probation Department, testified he supervised minor and six or seven other youths at the Joplin Youth Center in Trabuco Canyon. On the morning of August 27, 2015, he directed the group to line up and to proceed outside their dormitory for the Pledge of Allegiance. As the group passed Madrigal, minor shoved the youth in front of him, David M., in the back, causing David to stumble. David turned around to face minor, who began punching David with a closed fist to the face and chest area. Minor and David fought and ignored Madrigal's order to stop fighting and get down on the ground. Madrigal managed to drag David to the ground. As Madrigal reached for his handcuffs, minor jumped on Madrigal's back and attempted to strike David again. Minor ignored Madrigal's order to stop and get down on the ground.<sup>2</sup> Other officers arrived and restrained minor.

#### *Defense Case*

Raul Zuniga, another Joplin corrections officer, heard Madrigal yell "to get down." Zuniga saw two youths fighting. Minor struck the other youth, and as the latter went "down to the floor" minor "was continuing to punch." Zuniga restrained minor.

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The court declared minor to be a ward of the juvenile court (Welf. & Inst. Code, § 602) and placed him on probation on various terms and conditions. Minor admitted violating his probation in May 2015 by failing to attend school, failing to report to his probation officer, failing to submit to substance abuse testing, consuming alcohol, and failing to obey school regulations. The court ordered him assigned to the Youth Reporting Center (YRC) program for 90 days. In July 2015, minor again admitted violating probation in numerous particulars. The court placed him in the accountability commitment program (ACP).

<sup>2</sup> Minor filed a notice of appeal from the September 22, 2015, "Denial of [Welfare and Institutions Code section] 701.1" and the July 24, 2015 "True findings on Counts 1 & 2, Dispo." We assume the reference to the July 2015 findings is a mistake, and minor actually appeals from the September 24, 2015, jurisdictional and dispositional orders.

Minor argued he was close to Madrigal, but not “hanging on him” as he tried to strike the other youth.

Minor testified that the day before the fight he heard other youths call another youth a “snitch.” Minor felt bad and invited the youth to play basketball. David called minor an “embarrassment,” a snitch, and a bitch, which angered minor. The next day, minor “accidentally stepped on” David’s shoe as they were going outside to “do flag.” David had his hands at his side with clenched fists rather than behind his back as required. Minor interpreted this to mean “something was going to happen.” David turned around and said “watch where the [fuck] you’re going.” Minor replied “what the [fuck] are you going to do about it.” David struck him with a closed fist on his right cheek. Minor tried to cover himself and did not hit or attempt to strike David. After Madrigal dragged David down, minor went toward David, but did not take a swing at him. David reached over Madrigal and hit minor on the left cheek. He never heard Madrigal order them to get down, but he did see the rest of the group on the ground. He dropped to the ground when Zuniga put his hand on his shoulder. He received a bloody nose from David’s first punch.

The court expressly resolved credibility issues against minor and found the allegations to be true. The court ordered minor to serve 30 days in an appropriate juvenile institution with credit for 17 days already served. The court also imposed a \$50 restitution fine, and directed all prior terms and conditions of minor’s probation remain in effect after minor’s release to parental custody.

#### 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 there was substantial evidence at the close of the prosecution’s case-in-chief (Welf. & Inst. Code, § 701.1) and after the defense case demonstrating minor committed misdemeanor battery and obstructed a law enforcement officer in the

performance of his duties, and whether the juvenile court abused its discretion in ordering minor to serve 30 days in an appropriate juvenile institution. Minor 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:

MOORE, ACTING P. J.

IKOLA, J.