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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN ARI SCHLEIMER,

Defendant and Appellant.

H037579

(Santa Clara County  
Super. Ct. No. C1079694)

Defendant Benjamin Ari Schleimer was charged with one count of attempted murder (Pen. Code, §§ 664, 187 (count 1))<sup>1</sup> and two counts of assault with force likely to cause great bodily injury (§ 245, subd. (a)(1) (counts 2 & 3)). Counts 1 and 2 related to an assault on defendant's girlfriend and both alleged that defendant had personally inflicted great bodily injury (GBI). (§§ 12022.7, subd. (e), 1203, subd. (e)(3).) Count 3 involved a separate victim.

Defendant pleaded no contest to counts 2 and 3 and admitted the GBI allegation attached to count 2 without conditions. The trial court dismissed count 1 on motion of the prosecutor, sentenced defendant to the aggravated term for count 2 (four years), imposed the term for count 3 consecutively, and stayed imposition of sentence on the GBI enhancement, making the sentence a total of five years in prison. The court granted 553 days custody credit, imposed pertinent fees and fines, and encouraged defendant to

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<sup>1</sup> Hereafter, unspecified section references are to the Penal Code.

avail himself of intensive drug treatment while in custody. Defendant appeals from the conviction.

We appointed counsel to represent defendant on appeal. Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. Defendant has submitted a letter brief asking this court to reduce his sentence based upon mitigating factors he argues the trial court did not consider.

## **I. FACTS**

On or about June 12, 2010, defendant and his girlfriend were present at Lupin Lodge, a rural property in the mountains above Los Gatos. They were there to attend a “Burning Man” type party. Both had ingested LSD. At one point during the day, without any apparent provocation, defendant attacked the victim, pinned her to the ground, jammed his fingers in her mouth, and choked her so that she lost consciousness twice, vomited and was incontinent of urine. Another woman came to help and defendant tackled her and began to choke her. The first victim suffered hemorrhaging of both eyelids, abrasions on her neck, bruises and scratches on her legs, and a bruised tongue. Defendant was taken into custody by security personnel at the event.

After his arrest, defendant underwent several psychological tests. One examiner found no evidence of a chronic neuropsychological condition and believed his behavior on the day of the assaults was the result of temporary intoxication with a psychoactive substance. Defendant’s extended family was present in court at sentencing as well as during prior proceedings.

The trial court found that the crime involved great violence and acts disclosing a high degree of cruelty and that the victim was particularly vulnerable. The court stated “that to some extent I believe that this case was mitigated to a degree by [defendant’s] inebriated or intoxicated state.” The court also found that defendant had voluntarily acknowledged wrongdoing at an early stage. The court found no other mitigating factors

and concluded that the matter warranted the aggravated term for the attack on the first victim. The court imposed a consecutive term for the assault on the second victim because “that was a separate crime inflicted upon a separate victim wholly unrelated to the assault” on the first victim.

**II. DISCUSSION**

We have reviewed the whole record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106 and have read and considered defendant’s supplemental brief. Having done so, we conclude that there is no arguable issue on appeal.

**DISPOSITION**

The judgment is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.