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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ISMAEL ANGEL GARCIA,

Defendant and Appellant.

H038308

(Santa Clara County

Super. Ct. No. C1199040)

On January 27, 2012, defendant Ismael Angel Garcia pleaded no contest to one count of shooting at an inhabited dwelling (Pen. Code, § 246)¹ and one count of assault with a firearm (§ 245, subd. (a)(2)). Garcia also admitted allegations that he personally used a firearm in committing the assault with a firearm (§ 12022.5, subd. (a)), as well as that he had suffered a prior strike conviction (§ 1170.12) and a prior serious felony conviction (§ 667, subds. (a), (b)-(i)). On April 24, 2012, Garcia was sentenced to 26 years, four months in prison.

We appointed counsel to represent Garcia in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. We notified Garcia of his right to submit written argument in his behalf within 30 days, and he has filed a letter brief claiming ineffective assistance of counsel for failing to adequately investigate.

¹ Further unspecified statutory references are to the Penal Code.

I. FACTUAL AND PROCEDURAL BACKGROUND²

At about midnight on January 28-29, 2011, in the city of San Jose, Freddy Bermudez arrived at the home of his friend Jose Mejia.³ Bermudez was invited to the home in order to celebrate with Mejia and his girlfriend, Sylvia Limon, who had just received a raise and possible promotion at work. When Bermudez arrived, there were other people at the residence, including Garcia, all of whom had been drinking heavily.

At some point after Bermudez arrived, there was an argument, and Garcia got upset when he learned that Mejia had been struck by Limon's ex-boyfriend awhile ago but did not retaliate. Garcia attempted to wake up Mejia, who by this time was passed out on his bed. Bermudez and Garcia began arguing about whether Garcia tried to kick Limon's dog and, in the course of this argument, Garcia pushed Bermudez. Limon tried to calm Garcia and tried to get him to stay since he had been drinking. Extremely inebriated and angry, Garcia left the residence and drove off. Before he left, Garcia told Bermudez that he would return. Bermudez thought that Garcia would just go home and pass out, so he went back into the residence.

About 15 to 20 minutes later, approximately three gunshots went through the glass windows on the front door. Garcia walked in armed with a gun, and Limon, upset about the damage to her home, yelled at him in Bermudez's presence. Garcia came after Bermudez and challenged him to a fight. In the meantime, Limon tried unsuccessfully to wake up Mejia, hid when Garcia momentarily came into the bedroom, and then called 911.

² As Garcia pleaded no contest, the facts are taken from the transcript of the preliminary hearing.

³ Mejia is Garcia's brother.

After hearing the glass breaking as well as what he thought was a gunshot, Bermudez fled the residence. He found a bullet hole in his car and learned from the police that Garcia was responsible.

After the shots were fired, neighbor Stephen Bufalini saw Garcia walking with a limp down the street away from his brother's residence.

Garcia was charged by information with attempted murder (§§ 187, 664, count 1); shooting at an inhabited building (§ 246, count 2); first degree burglary (§§ 459, 460, subd. (a), count 3); and assault with a firearm (§ 245, subd. (a)(2), count 4). The information further alleged Garcia: (1) personally used a firearm in the commission of counts 1 and 3 (§§ 12022.5, subd. (a), 12022.53, subds. (b) & (c)); (2) had a prior strike conviction (§ 667, subd. (a)); and (3) a prior serious felony conviction (§ 667, subds. (b)-i)).

On January 27, 2012, the People amended the information to allege a firearm enhancement as to count 4. (§ 12022.5, subd. (a).) On that same day, Garcia pleaded no contest to counts 2 and 4, admitted the firearm enhancement as to count 4 and admitted having both a prior strike and a prior serious felony conviction. In exchange for his plea, Garcia was to receive a sentence of 26 years, four months in prison.

On April 24, 2012, Garcia was sentenced to 26 years, four months in prison, consisting of twice the aggravated term of four years on count 4 plus 10 years for the firearm enhancement (18 years), plus three years, four months (one-third of the doubled middle term of 10 years) on count 2, plus five years for the prior serious felony conviction. He was awarded 519 days of presentence custody credit. The trial court imposed a restitution fine of \$240 and suspended imposition of a parole revocation fine in the same amount (§§ 1202.4, subd. (b), 1202.45).

In his letter brief, Garcia argues that he and Mejia told his defense counsel that he believed he had shot at the floor rather than at the victim and that there was evidence of a bullet strike on the tile floor of the kitchen. According to Garcia, his counsel responded it

was “to [*sic*] late to change [his] plea” and no investigation was done to see if there was a bullet strike on the floor of Mejia’s kitchen.

Garcia’s ineffective assistance of counsel claims cannot be resolved on the appellate record before us. The California Supreme Court has “repeatedly stressed ‘that “[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,” the claim on appeal must be rejected.’ [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.” (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Based on this record, we have no basis for determining why Garcia’s counsel may have elected not to investigate the report by Garcia and Mejia that there was a bullet strike on Mejia’s kitchen floor.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the whole record and have concluded there is no arguable issue on appeal.

II. DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.