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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RODERICK CRAIG HAVEN,

Defendant and Appellant.

H041079

(Monterey County
Super. Ct. Nos. SS121810A,
SS131298A)

Defendant Roderick Craig Haven pleaded no contest to a count of inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)),¹ a count of dissuading a witness by force or threat (§ 136.1, subd. (c)(1)), and a misdemeanor count of violating a restraining order (§ 166, subd. (c)(1)). Defendant also admitted the allegation that he had a prior strike conviction (§ 1170.12, subd. (c)(1)). He was sentenced to an aggregate term of 12 years in prison.

On appeal, his counsel has filed an opening brief in which no issues are raised and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has declared defendant was notified an independent review under *Wende* was being requested. We advised defendant of his right to submit written argument on his own behalf within 30 days. Defendant has submitted a letter brief arguing he was not properly advised of the consequences of his plea agreement, his

¹ Further unspecified statutory references are to the Penal Code.

trial counsel rendered ineffective assistance, and the district attorney made false statements about his criminal record.

Pursuant to *Wende*, we have reviewed the entire record and have concluded that there are no arguable issues. We will provide “a brief description of the facts and procedural history of the case, the crimes of which defendant was convicted, and the punishment imposed.” (*People v. Kelly* (2006) 40 Cal.4th 106, 110.) Pursuant to *Kelly*, we will consider defendant’s letter brief and will explain why we reject his contentions. (*Id.* at p. 113.)

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

Case No. SS121810A²

In September 2012, a Pacific Grove police officer responded to a domestic dispute. The officer approached a residence and encountered victim Jane Doe sitting on a couch. Doe had red, puffy eyes and a laceration on her face above her eye. There was a strong odor of alcohol. Doe told the officer that defendant was her live-in boyfriend and that they had argued about where he was going to stay. Doe denied anything else happened, but when asked what she had been hit with she responded that defendant had hit her with a closed fist. Doe was unsure whether defendant had drunk any alcohol that day. Defendant had already left, but Doe said she thought he would return and would be “very drunk and angry.” The officer photographed the injury on Doe’s face.

Defendant returned to Doe’s residence later that night and was arrested after another report of a domestic dispute. On the way to the police station, defendant spontaneously told officers he did not hurt Doe, and she always hurts herself because she

² Since defendant pleaded no contest, we take the facts from the probation officer’s report, which was based on a report prepared by the Pacific Grove Police Department.

gets drunk and bumps into things. Defendant also said he was going to sue the officer and he would “get off on these charges.”

Case No. SS131298A³

Between June 2, 2013, and July 1, 2013, defendant called Doe approximately 172 times from the Monterey County jail, making contact with her 52 times. During the calls to Doe, defendant blamed her for his current incarceration, admitted to Doe that he had used methamphetamine when he was not in custody, and demanded Doe get him out of jail. He also acknowledged he was not supposed to be calling her.

Prior Convictions

Defendant had a prior conviction for a residential burglary (§ 459) he committed in 1983. He also had previous convictions for grand theft (§ 487) and receiving stolen property (§ 496). Defendant was on parole in 1986 and had three parole violations, two in 1989 and one in 1990. He had two misdemeanor convictions for disturbing the peace (§ 415), one in 1989 and one in 1993. He also had a prior conviction for possessing firecrackers (Health & Saf. Code, § 12305). In 1999, he was convicted of a misdemeanor for battery against a cohabitant (§ 243, subd. (e)). He also had a misdemeanor conviction in 2000 for inflicting corporal injury on a cohabitant (§ 273.5, subd. (a)) and a misdemeanor conviction the following year for violating a restraining order (§ 166, subd. (c)(1)).

Procedural History

The Complaints

On January 16, 2013, a complaint was filed charging defendant with two felony counts and a misdemeanor count of inflicting corporal injury on a cohabitant (§ 273.5,

³ We take our summary of the facts of this case from the probation officer’s report, which was based on a report made by the district attorney.

subd. (a)). The complaint also alleged defendant had a prior serious or violent felony conviction. (§ 1170.12, subd. (c)(1).)

On July 29, 2013, a second complaint was filed charging defendant with a count of dissuading a witness (§ 136.1, subd. (c)(1)) and 10 misdemeanor counts of knowingly violating a restraining order (§ 166, subd. (c)(1)).⁴

The Plea

Defendant entered a plea of no contest on January 21, 2014, to a count of inflicting corporal injury on a cohabitant (§ 273.5, subd. (a)), a count of dissuading a witness (§ 136.1, subd. (c)(1)) and a misdemeanor count of knowingly violating a restraining order (§ 166, subd. (c)(1)). Defendant signed a waiver of rights form for both cases, which he acknowledged at the hearing.

The *Romero* Motion

The following month, defendant requested the court exercise its discretion and strike his prior strike conviction in the interest of justice pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Defendant argued his prior strike conviction for burglary (§ 459) was over 30 years old. He also presented support letters. The court denied the *Romero* motion on March 13, 2014.

Motion to Withdraw Plea and Sentencing

Defendant filed a motion to withdraw his plea on April 4, 2014, arguing that he was never advised by the court of his right to a jury trial and did not expressly waive his right to a jury trial on the record. The court denied the motion on April 24, 2014. The court reasoned that its oral advisements to defendant during the plea hearing and the signed plea form containing a waiver of his right to a public trial by a jury or a court were sufficient.

⁴ These cases were consolidated by the trial court on September 12, 2013.

On May 13, 2014, the court sentenced defendant to an aggregate term of 12 years in prison, which was comprised of a doubled middle term of six years for the domestic violence count (§ 273.5, subd. (a)) and a doubled middle term of six years for the dissuading a witness count (§ 136.1, subd. (c)(1)). Defendant was sentenced to a one-year concurrent term for his misdemeanor count of violating a restraining order (§ 166, subd. (c)(1)). Six other cases pending against him were dismissed.⁵

On May 29, 2014, defendant filed a notice of appeal challenging the judgment in his case. Defendant filed a second notice of appeal on June 18, 2014, challenging his sentence. Defendant filed a third notice of appeal and requested a certificate of probable cause, which the trial court granted.

DISCUSSION

Defendant's letter brief argues reversal is necessary because he was not properly advised of the consequences of his plea. He argues his trial counsel told him that it was "more than likely" that he would receive a probationary term and that his *Romero* motion would be granted because his prior offense was committed in 1983. Defendant further claims he was never advised about the possibility he would face a 12-year prison sentence, and he was unable to read the plea deal because he had no reading glasses.

The record does not support defendant's contentions. Defendant signed and initialed two plea forms (in both case Nos. SS131298A, SS121810A) where he acknowledged he could receive a maximum prison sentence of 16 years. During the plea hearing, the court orally advised defendant that "[t]he potential consequences could be, in this case, no more than 16 years in combination with the strike in all the counts," which would be "[f]ollowed by minimum of three years on parole." Additionally, the court

⁵ Many of the dismissed cases involved allegations that defendant was contacting Doe in violation of his restraining order and had hit Doe. One of the dismissed cases alleged defendant was found in possession of heroin.

advised defendant that it was “giving no indication as to whether or not I would strike the [prior] strike.” The court also stated that if the prior strike was stricken, it was possible probation would be granted. However, the court reiterated that it was “giving no indication as to whether or not there would be any felony probation at the outset instead of a prison commitment.” Defendant verbally acknowledged he understood these statements and said he had no further questions of his trial counsel or of the court. Defendant also stated he had spoken to his attorney about the rights he was waiving. Therefore, we find defendant was adequately advised of the rights he was waiving and the consequences of his plea.

Defendant further argues the district attorney “made false accusations that [he] had a violent escape” and that he was “an arsonist,” and his trial counsel failed to object to these unfounded claims. In our independent review of the record, we are unable to locate these alleged statements.⁶ Defendant’s prior criminal history was discussed during the hearing on his *Romero* motion, and the district attorney mentioned his prior convictions for domestic violence and for illegally possessing an explosive. Defendant’s trial counsel clarified that the conviction for possessing an explosive involved possession of firecrackers, “[a]n explosive device” in violation of Health and Safety Code section 12305.⁷ Given this colloquy, we do not find the district attorney made any improper arguments or incorrect factual assertions during the *Romero* motion.

⁶ Defendant does not provide a citation to these statements in the record.

⁷ Furthermore, defendant’s prior convictions were properly considered by the court in ruling on the *Romero* motion. In determining whether to strike a prior strike pursuant to section 1385 and *Romero*, a trial court must determine “whether, in light of the nature and circumstances of [a defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects,” the defendant can be deemed outside the spirit of the Three Strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

Defendant also contends his trial counsel made false representations that he would receive credit for the actual time he spent in custody at county jail and that his *Romero* motion would somehow be granted on appeal.

First, contrary to defendant's assertions, the record indicates he was given credit for the time he spent in county jail. The trial court awarded him a total of 692 days credit for his domestic violence conviction (§ 273.5, subd. (a)), comprised of 346 days of actual custody and 346 days of conduct credit.

Second, defendant's claim that his trial counsel rendered ineffective assistance by giving him inadequate advice is unsupported by the record. The California Supreme Court has "repeatedly stressed 'that "[i]f 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.) The same reasoning applies to defendant's claim of ineffective assistance of counsel with respect to his trial counsel's advisements regarding his negotiated plea, which are also devoid of support in the appellate record.

In addition to considering the arguments set forth by defendant in his letter brief, we have also conducted an independent review of the record pursuant to *Wende* and *Kelly* and have concluded there are no arguable issues on appeal.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Márquez, J.