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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ERIC DUWAYNE GEE, Defendant and Appellant.	B234805 (Los Angeles County Super. Ct. No. MA049768)

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Sunnie L. Daniels, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Eric Duwayne Gee appeals from the order revoking probation and imposing a previously suspended four-year state prison sentence.

On June 10, 2010, defendant argued with his girlfriend, Charniece Shirley, and punched her in the arm. Their argument continued inside her car, where defendant cracked the windshield by kicking it with his feet. Police were contacted, and Shirley was given an "emergency protective order." After defendant was taken into custody, he repeatedly telephoned Shirley in July 2010.

Defendant was charged by information with assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1), count 1),[1] misdemeanor vandalism (§ 594, subd. (a), count 2), and disobeying a domestic relations court order (§ 273.6, subd. (a), count 3). It was further alleged that defendant had suffered a prior serious or violent felony conviction within the meaning of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). It also alleged he had previously served a separate prison term for a felony conviction (§ 667.5, subd. (b)). Appearing with appointed counsel on January 20, 2011, defendant entered a negotiated plea of no contest to aggravated assault. The plea agreement provided defendant would be sentenced to the upper term of four years in state prison and would waive his right to presentence custody credit. In return, imposition of sentence would be suspended, defendant would be placed on five years of formal probation and the remaining counts and sentencing enhancements would be dismissed. Among the conditions of defendant's probation were that he "not use or threaten to use force or violence on any person"; and "not annoy, harass or molest any person or witness involved in this case, especially Charniece Shirley"; and that he "obey the protective order . . . issued in this case."

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[1] Statutory references are to the Penal Code.

The record of the plea hearing established defendant was advised of and waived his constitutional rights and was advised of and acknowledged he understood the consequences of his plea. Counsel stipulated to a factual basis for the plea. The trial court found defendant had knowingly, voluntarily and intelligently waived his constitutional rights and entered his no contest plea. In accordance with the plea agreement, the trial court sentenced defendant to a four-year state prison term, which was suspended, and placed defendant on five years of formal probation. Defendant was also ordered to make restitution to Shirley in an amount to be determined by the probation department. On the People's motion, the remaining counts and special allegations were dismissed.

On May 19, 2011, defendant's probation was summarily revoked, and a bench warrant was issued for his arrest after the probation department reported defendant had violated his probation.

At the contested probation violation hearing on July 12, 2011, the People introduced evidence that Shirley and defendant had engaged in sexual relations on multiple occasions since his release from custody. The couple had also argued, during which defendant had choked her, damaged her cell phone and kicked a dent in her car.

On the afternoon of May 3, 2011, defendant telephoned Shirley, who agreed to allow defendant to pick up some of his belongings at her house. When defendant arrived, Shirley had him wait at the front door until she retrieved his belongings. However, defendant entered the house, walked around and asked to take a shower. Shirley demanded that he leave and a struggle ensued. Defendant hit Shirley on the arm and chest; and she bit his arm. Shirley's daughters were present, and they urged defendant to leave. Defendant said he was "Grape Street" and threatened to kill Shirley. She was afraid to call police. Defendant eventually left with a friend.

Defendant's mother, cousin and friend testified on defendant's behalf that Shirley had pursued defendant since his release from custody. According to them, on numerous occasions, Shirley had either telephoned or showed up at their individual homes looking for defendant. Shirley also frequently met defendant at both his mother's house and his

friend's apartment. On the afternoon of May 3, 2011, the friend picked defendant up at Shirley's house and drove him to the hospital to be treated for bite wounds on his arm.

At the conclusion of the hearing, the trial court found defendant had violated probation by repeatedly violating the protective order mandating that he have no contact with Shirley.

The trial court imposed the previously suspended sentence of four years in state prison. Defendant received presentence custody credit of 100 days (50 actual days and 50 days of conduct credit). The court ordered defendant to pay a $400 domestic violence fund fine, a $40 security assessment fee, a $30 criminal assessment fee and a $1,600 restitution fine. The court imposed and stayed a parole revocation fine pursuant to section 1202.45.

We appointed counsel to represent defendant on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On December 5, 2011, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied defendant's attorney has complied fully with the responsibilities of counsel. No arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J. **JACKSON, J.**