

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW LUQUE,

Defendant and Appellant.

B285409

(Los Angeles County
Super. Ct. No. BA458170)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H. Egerton, Judge. Affirmed with directions.

Fred Ricco McCurry, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Andrew Luque appeals from a judgment of conviction. Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, identifying no issues and requesting that this court review the record and determine whether any arguable issue exists on appeal. We have done so and we affirm.

PROCEDURAL BACKGROUND

Defendant was charged with one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).¹ It was alleged that defendant personally inflicted great bodily injury on Victor Thomas (§ 12022.7, subd. (a)). Jurors found defendant guilty as charged. Defendant was sentenced to an aggregate term of seven years in state prison consisting of four years for the assault and three years for the great bodily injury enhancement. The trial court noted that the video reflected substantial violence; defendant induced others to participate in the crime; and defendant had an extensive criminal history. The abstract of judgment incorrectly identifies the enhancement as being pursuant to section 12022.5, subdivision (a).

FACTUAL BACKGROUND

The victim, Victor Thomas, was the only witness to testify at trial. Thomas knew defendant for 10 years. Both lived on the street. On May 29, 2017, when Thomas was in his tent, Thomas heard defendant say, " 'He's in the tent. There he is. Get him.' " Defendant and an unidentified individual were outside Thomas's tent. Thomas testified he was hit with a bat. He testified that defendant hit him in the back, ribs, and jaw with an object that

¹ Undesignated statutory citations are to the Penal Code.

Thomas described as a “two-by-four.” A video of the incident, taken from a bystander’s cell phone, was played for jurors.

As a result of injuries suffered when defendant hit him, Thomas required 12 to 14 stitches in his head. He also underwent surgery and had plates placed in his head. Thomas testified that he was in the hospital for two weeks after the incident, and he continued to have pain at the time of trial.

DISCUSSION

Defendant appealed from the judgment. We appointed counsel to represent defendant. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.)

Defendant was advised by this court of the opportunity to file a supplemental brief. He filed a supplemental brief arguing that the facts were not adequately presented during trial. According to defendant, the video showed to jurors reflected only a portion of his interaction with Thomas. Further, according to defendant, Thomas instigated the violence. Defendant’s supplemental brief is based on matter outside the record and cannot be considered on appeal. (See *In re Carpenter* (1995) 9 Cal.4th 634, 646 [“appellate jurisdiction is limited to the four corners of the record on appeal”].) To the extent defendant is claiming that his counsel was ineffective, that claim also cannot be resolved from the record on appeal.

We have examined the entire record and are satisfied that defendant’s attorney has complied with his responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d 438-443; see *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The judgment is affirmed. The case is remanded to the trial court, and the trial court is directed to prepare a corrected abstract of judgment reflecting an enhancement under section 12022.7, subdivision (a), and not 12022.5, subdivision (a).

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.