

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

BOYCE MARTIN OSIFE,

Defendant and Appellant.

B267611

(Los Angeles County
Super. Ct. No. BA434571)

APPEAL from a judgment of the Superior Court of Los Angeles County. Edmund Wilcox Clarke, Jr., Judge. Affirmed as modified, with directions.

John J. Uribe, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On the afternoon of March 14, 2015, Boyce M. Osife shoplifted two cans of beer from the La Fiesta Market. The proprietor – Jack Du – followed Osife outside and confronted him. Using a beer can as a weapon, Osife struck Du several times in the head and face. Du went back inside his store, retrieved a can of pepper spray, and went outside to find Osife. Du found Osife in a nearby alley and pepper-sprayed Osife in the face. Osife ran off, but Du followed, calling the police on his mobile phone as he did. The police found Osife inside a nearby building and arrested him.

Osife was charged with one count of second degree robbery. (Pen. Code, § 211.)¹ The information also alleged that Osife was eligible for a one-year sentence enhancement because he had been out of prison less than five years following an earlier conviction for grand theft. (§ 667.5, subd. (b)).

Osife testified that he was homeless and had been attacked the night before, leaving him with an arm injury so painful that he believed the arm was broken. He was on his way to the hospital when he entered the market looking for beer, stating that he was “out of it.” He struck Du because Du had grabbed his arm from behind, leading him to think he was being attacked. After recognizing Du, he stopped his attack and walked off.

A jury found Osife guilty of robbery instead of the lesser included offense of petty theft. The issue of the prior conviction allegation had been bifurcated and Osife had waived his right to a jury trial. He admitted the prior grand theft conviction for purposes of the one-year, prior prison term enhancement. (§ 667.5, subd. (b).)

Osife’s lawyer submitted a sentencing memorandum contending, without supporting evidence, that Osife suffered from post traumatic stress disorder (PTSD) and had a substance abuse problem. At that hearing, both Osife and his wife told the court that he suffered from PTSD due to witnessing the murder of a childhood friend, and also had a substance abuse problem. The trial court said that it accepted defense counsel’s “implied representation as an officer of the court” concerning Osife’s substance abuse

¹ All further section reference are to the Penal Code.

and mental health issues, finding some corroboration from Osife's record of convictions. The probation report showed that Osife had convictions and arrests for vandalism, battery, theft, corporal injury to a spouse, grand theft, drug possession, disorderly conduct, and burglary. At the time of the current offense, Osife had an open probation violation case arising from his grand theft conviction, which was trailing.

The trial court imposed the high-term five-year sentence for the robbery, and imposed but stayed the one-year sentence enhancement under section 667.5, subdivision (b). The grand theft conviction in the probation violation matter was reduced to a misdemeanor under Proposition 47.²

Osife filed a notice of appeal. On March 17, 2016, his appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that he had reviewed the record and had sent Freeman a letter advising him that such a brief would be filed and that he could file a supplemental brief if he chose to. That same day, this court sent Osife a letter advising him that a *Wende* brief had been filed and that he had 30 days to submit a brief raising any issues he wanted us to consider.

Osife then filed a 2-page, handwritten supplemental brief. In it, Osife complains that his mental health and substance abuse issues were not presented to the jury and that the trial court did not "look into" those issues. He also states that his sentence was harsh because he did not in fact suffer "some" of the alleged prior convictions and never had a chance to explain the circumstances to show he was not a violent criminal. Apart from the assertions made by Osife and his wife at the sentencing hearing, there is no factual support for his claims that he has a substance abuse problem or suffers from PTSD. In any event, it appears that the trial court accepted Osife's assertions as true when it sentenced him. As for the prior convictions, only one resulted in a sentence

² The trial court erred by staying, rather than striking, the enhancement. (*People v. Brewer* (2014) 225 Cal.App.4th 98, 104.) As a result, we will modify the sentence to strike the section 667.5, subdivision (b) enhancement.

enhancement, and Osife admitted the truth of that conviction. As a result, he has not shown that error occurred.

We have examined the entire record and are satisfied that Osife's attorney has fully complied with his responsibilities and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259; *Wende, supra*, 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106, 120-121.)

DISPOSITION

We modify the judgment to reflect that the Penal Code section 667.5, subdivision (b) enhancement is stricken, and direct the superior court to amend the abstract of judgment accordingly and forward a copy of the corrected abstract to the Department of Corrections and Rehabilitation. The judgment as modified is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.