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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JACKSON,

Defendant and Appellant.

B280640

(Los Angeles County
Super. Ct. No. TA138560)

THE COURT:*

Defendant and appellant David Jackson (defendant) appeals from the judgment entered after he pled no contest to attempting to dissuade a witness. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. We notified defendant of his counsel's brief and gave him leave to file his own brief or letter stating any grounds or argument he might wish to have considered. Defendant filed his own brief, seeking new appellate counsel, asserting ineffective assistance of trial counsel, and asserting that the trial court imposed unauthorized sentence enhancements. We have reviewed the entire record and find defendant's contentions are

* ASHMANN-GERST, Acting P.J., CHAVEZ, J.,HOFFSTADT, J.

without merit or not amenable to review on appeal. Finding no other arguable issues, we affirm the judgment and deny defendant's request for substitute counsel.

Defendant was charged by amended information in count 1 with assault by a means of force likely to produce great bodily injury, in violation of Penal Code section 245, subdivision (a)(4).¹ Defendant was charged in counts 2 and 3, with attempting to dissuade a witness in violation of section 136.1, subdivision (a)(2), and in count 4, with disobeying a court order, a misdemeanor in violation of section 166, subdivision (a)(4). As to count 1 it was alleged that defendant personally inflicted great bodily injury on the victim, within the meaning of section 12022.7, subdivision (e). It was further alleged that defendant had suffered a prior serious felony conviction, first degree burglary, within the meaning of section 667, subdivision (a)(1), and the "Three Strikes" law (§ 667, subds. (b)-(j), § 1170.12, subd. (a)-(d)); and that he had served two prior prison terms within the meaning of section 667.5, subdivision (b).

Defendant was initially represented by the public defender. Shortly after arraignment defendant retained private counsel and the public defender was relieved. In August 2016, after the amended complaint was filed, defendant entered into a plea agreement whereby he would plead no contest to count 2 and admit the prior-conviction allegations, in exchange for a 10-year prison sentence and dismissal of the remaining counts.

Prior to entering the plea and admissions, defendant was warned of possible consequences of the plea, was advised of his privilege against self-incrimination, as well as his rights to have a court or jury trial, to confront and cross-examine witnesses. Defendant waived those rights. After defendant entered his plea

¹ All further references to statutes are to the Penal Code unless stated otherwise.

and admissions, counsel stipulated to a factual basis for the plea based upon the preliminary hearing transcript and the police reports. The trial court found that defendant understood the charges and the consequences of his plea, as well as his constitutional rights, that he had made a knowing, intelligent waiver of his rights, and that the plea was freely and voluntarily entered.

Following a time waiver and several continuances, the sentencing hearing was held on January 18, 2017, at which time defendant submitted a written motion to discharge his retained attorney and appoint a state panel attorney.² He orally advised the court that he wanted new counsel in order to withdraw his plea. The court declined to conduct the requested *Marsden* hearing,³ because defendant was represented by retained counsel. After reviewing a transcript of the plea hearing, the trial court concluded that any motion to withdraw the plea would lack merit, and further that the motion to substitute counsel was untimely. The court thus denied defendant's motion.

The trial court then sentenced defendant to 10 years in prison in accordance with the plea bargain, and dismissed all remaining counts. The court calculated the sentence as two years, doubled as a second strike, plus consecutive enhancements of five years pursuant to section 667, subdivision (a), and one year pursuant to section 667.5, subdivision (b). The court ordered defendant to pay mandatory fines and fees, and awarded combined presentence custody credits of 890 days.⁴

² See generally, *People v. Ortiz* (1990) 51 Cal.3d 975; *People v. Lara* (2001) 86 Cal.App.4th 139.

³ See *People v. Marsden* (1970) 2 Cal.3d 118.

⁴ The judgment was subsequently amended to add two additional days of presentence custody credit, for a total of 892

Defendant filed a timely notice of appeal stating that the appeal was based on sentencing or other matters occurring after the plea which did not affect the validity of the plea.

In his supplemental brief, defendant claims that trial counsel rendered ineffective assistance by failing to adequately investigate or to present evidence of unlawful enhancements. As this contention relates to matters outside the record, it must be raised in a habeas corpus proceeding. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Defendant also contends that he was entitled to a jury trial on the enhancement allegations. Our review of the plea transcripts shows that defendant understood his right to a jury trial, waived it, and entered a knowing and intelligent admission to the enhancement allegations. We therefore reject defendant's contention that he was entitled to a jury trial. As defendant was sentenced to 10 years as agreed and received the benefit of his bargain, he may not now complain of sentencing errors. (See *People v. Hester* (2000) 22 Cal.4th 290, 295.)

Defendant requests new appellate counsel, claiming that his counsel failed to raise arguable issues in his *Wende* brief. We have examined the entire record, including defendant's supplemental brief. We are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

days. We granted defendant's motion to augment the record with the corrected abstract of judgment.

Defendant's request for substitute counsel is therefore denied, and the judgment is affirmed.

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