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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GENARO AGUILAR MORALES,

Defendant and Appellant.

B283655

(Los Angeles County
Super. Ct. No. PA088233)

APPEAL from a judgment of the Superior Court of Los Angeles County, David W. Stuart, Judge. Affirmed.

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Genaro Aguilar Morales appeals from the judgment entered following his negotiated plea of no contest to kidnapping his girlfriend.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Incident*

According to the probation officer's report, on February 19, 2017 Morales's girlfriend M.C. reported a domestic violence incident to the San Fernando Police Department. M.C. recounted that on that date she and Morales got into an argument at her residence. Morales told M.C. to get in his car because he needed to go to his work to pick up something. As Morales drove, the argument continued, with Morales shouting at M.C. and driving at approximately 120 miles per hour. M.C. cried and pleaded with Morales to stop the car and let her out. Morales failed to stop, and instead said, "You are going to regret this." When they arrived at his workplace, Morales got out of the car, and ordered M.C. to wait in the car for him.

Morales returned with a black handgun, and pointed it at M.C. M.C. thought Morales was going to kill her. He got in the car, and drove away at over 100 miles per hour as M.C. continued to cry and plead for him to let her out. He pointed the gun at her as he drove, and refused to stop. After Morales passed a police car, Morales pulled into a parking lot, told M.C. to stay in the car, exited, and hid the firearm in the engine compartment. Morales walked away. M.C. asked a woman in the parking lot for help, and the woman drove M.C. away toward M.C.'s home. Once they left, Morales got back in his car and chased them until they

arrived at M.C.'s residence. Morales drove off, and M.C. called the police.

Detectives from the San Fernando Police Department obtained a search warrant for Morales's car, and recovered a loaded handgun inside the engine compartment.

B. *The Felony Complaint, Plea, and Sentencing*

The People charged Morales in a felony complaint with kidnapping (Pen. Code, § 207, subd. (a)), with a special allegation he personally used a firearm (*id.*, § 12022.53, subd. (b)), assault with a firearm (*id.*, § 245, subd. (a)(2)), and making a criminal threat (*id.*, § 422, subd. (a)). Morales pleaded not guilty and denied the special allegation.

On March 28, 2017 Morales agreed orally and in writing¹ to plead no contest to the crime of kidnapping. At the time he entered his plea, Morales was advised of his constitutional rights and the nature and consequences of the plea, which he stated he understood. Morales's counsel joined in the waivers of his constitutional rights. The trial court found Morales's waivers and entry of his plea were voluntary, knowing and intelligent.

On April 11, 2017, pursuant to the plea agreement, the trial court sentenced Morales to the lower term of three years in state prison and dismissed the remaining counts.² The court issued a protective order, requiring Morales to have no contact

¹ Morales initialed and signed a "Felony Advisement of Rights, Waiver, and Plea Form."

² Although not reflected in the transcript or minute order, we assume the trial court also intended to dismiss the firearm enhancement.

with and to stay at least 100 yards away from M.C. for 10 years. The court also ordered Morales to pay statutory fines, fees, and assessments and awarded him 57 days of presentence credits.

After this court granted Morales's application for relief from default for failure to file a timely notice of appeal, Morales's June 26, 2017 notice of appeal was accepted by the superior court as timely filed. In his notice of appeal, Morales checked the preprinted box indicating the "appeal challenges the validity of the plea or admission." The trial court granted Morales's request for a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Morales on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On January 26, 2018, we advised Morales he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

In his request for a certificate of probable cause, Morales asserted his defense counsel provided ineffective assistance of counsel because of his failure to take the case to trial. Morales stated, "I would had [*sic*] won my case if I would [have] taken [the case] to trial."

To prevail on a claim of ineffective assistance of counsel, a defendant bears the burden to show that (1) his or her ""counsel's representation fell below an objective standard of reasonableness under prevailing professional norms"" and that (2) he or she ""suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the

outcome.””” (*People v. Johnson* (2016) 62 Cal.4th 600, 653; accord, *People v. Mickel* (2016) 2 Cal.5th 181, 198; see also *Strickland v. Washington* (1984) 466 U.S. 668, 687-692 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

“““[I]f the record on appeal fails to show why counsel acted or failed to act in the instance asserted to be ineffective, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation, the claim must be rejected on appeal. [Citation.]” [Citations.]” (*People v. Johnson, supra*, 62 Cal.4th at p. 653; *People v. Carrasco* (2014) 59 Cal.4th 924, 982.)

The record on appeal does not show why Morales’s counsel did not take his case to trial. Nor does the record provide any support for Morales’s argument that had he taken the case to trial, he would have prevailed. If M.C. would have testified consistent with the description of the incident in the probation report, these facts could have supported a conviction for kidnapping and exposed Morales to a possible sentence enhancement for the use of a firearm. In addition, the trial court found Morales’s written and oral waivers and entry of his plea were voluntary, knowing and intelligent. Therefore, Morales has not shown ineffective assistance of counsel on the record before us on appeal.

We have examined the record with respect to potential sentencing or other post-plea issues and are satisfied Morales’s appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*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, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.