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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH EDWIN HEBERT,

Defendant and Appellant.

B279521

(Los Angeles County
Super. Ct. No. SA093943)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette Verastegui, Judge. Affirmed.

Susan Morrow Maxwell, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Joseph Hebert pleaded no contest to one count of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)),¹ and admitted to a prior strike. The trial court sentenced him to six years in state prison. On appeal, Hebert's appointed counsel has filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

FACTS²

On September 19, 2016, Neil Martell was at the West Los Angeles Veterans Administration Medical Center with his girlfriend, Rachel Axelton, to prepare for minor shoulder surgery. After a minor disagreement with Axelton over a phone charger, Martell walked away. Hebert then approached Axelton and offered her a cigarette. Axelton believed he was offering to help her with Martell. She told Hebert, "I know him, everything is fine." When Martell returned, however, Hebert punched him in the face, yelling, "Hey, give her back the charger!" Martell fell to the ground, unconscious.

¹ All further section references are to the Penal Code.

² The statement of facts is derived from a probation report made confidential pursuant to section 1203.05, which limits public access to the report 60 days after judgment is pronounced or probation is granted. However, section 1203.05 is directed at personal information, which might ordinarily be confidential, rather than the nonpersonal information, such as the factual summary of an offense and the evaluations, analyses, calculations, and recommendations of the probation officer. (*People v. Connor* (2004) 115 Cal.App.4th 669, 696.) Thus, it is appropriate to rely on the probation report to provide a brief statement of facts. (*People v. Kelly* (2006) 40 Cal.4th 106, 110 (*Kelly*).)

When the Veterans Administration police arrived, Martell was still unconscious. The officers observed Hebert next to a marked police car. He admitted, “I did it, I hit him, take me to jail.” He further stated, “I fucking hit him ‘cause he wouldn’t give her the cell phone charger.”

Hebert was taken into custody by the officers and charged with assault by force likely to produce great bodily injury in violation of section 245, subdivision (a)(4). It was further alleged Hebert personally inflicted great bodily injury (§ 12022.7, subd. (a)), causing the offense to become a serious felony within the meaning of section 1192.7, subdivision (c)(8). Hebert was also alleged to have a prior strike within the meaning of section 667, subdivision (b) through (i), and section 1170.12, which was also alleged as a serious felony pursuant to section 667, subdivision (a)(1).

As part of a plea agreement, Hebert pled no contest to the assault charge and admitted having suffered the prior strike in exchange for a six year sentence. The sentencing enhancement under section 12022.7, subdivision (a) was dismissed. Hebert was sentenced to the middle term of three years, doubled for the prior strike. He was ordered to pay a \$300 restitution fine, a \$300 parole revocation fine (which was stayed), a \$30 criminal conviction fee and a \$40 court security fee. Hebert timely appealed.

He filed a request for a certificate of probable cause on the grounds that the trial court lacked jurisdiction because the offense occurred at the West Los Angeles Veterans Administration medical center and he received ineffective assistance of counsel. His request for a certificate of probable cause was granted.

DISCUSSION

We appointed counsel to represent Hebert on appeal. Appointed counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for arguable issues. Counsel's declaration indicates she wrote and spoke to Hebert, consulted a senior CAP attorney, and communicated with trial counsel about the appeal. She also has mailed a copy of the brief and the record on appeal to Hebert.

We thereafter notified Hebert by letter that he could submit any claim, argument or issues that he wished our court to review. We have received no response from Hebert. We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled her duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *Kelly, supra*, 40 Cal.4th at p. 110.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.