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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. STANLEY SHELLEY, Defendant and Appellant.	B281283 (Los Angeles County Super. Ct. No. MA068396)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher Estes, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Stanley Shelley appeals from the March 7, 2017 judgment of misdemeanor assault and imposition of a sentence of 180 days consecutive to the felony term he is currently serving in prison. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY

The June 7, 2016 information charged appellant with one count of felonious assault with a deadly weapon (a cane), while confined in state prison (Pen. Code, § 4501, subd. (a)).[1] The information further alleged that appellant had incurred three prior convictions for serious/violent felonies (§§ 667, subds. (a)(1) & (d), 1170.12, subd. (b)); and, for four separate prison terms, did not remain free of prison custody and did commit an offense resulting in a felony conviction during a period of five years after the conclusion of each term served (§ 667.5).

On July 19, 2016, appellant filed a motion to set aside the information under section 995 on the basis that the instrument he used, a cane, cannot constitute a deadly weapon. The court denied the motion.

Also on July 19, 2016, appellant filed a motion under *Pitchess* and *Brady*[2] for disclosure of complaints, or other exculpatory or impeaching information, in the personnel files of Correctional Officers C. Kehres and A. Estrella. The court granted the motion and, after conducting an in camera hearing,

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[1] Unless otherwise noted, further statutory references are to the Penal Code.

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531; *Brady v. Maryland* (1963) 373 U.S. 83.

concluded that the personnel files contained no discoverable material.

The matter proceeded to a jury trial. Officers Andres Estrella and Daniel Sanchez testified to the following: On January 8, 2015, Officer Estrella and Officer Kehres escorted appellant, who was in a wheelchair and holding a prison-issued wooden cane, from a medical facility to his cell. The officers rolled appellant to his cell and removed his restraints. A booth control officer, who had control of opening and closing the doors from a remote location, remotely opened the cell door to reveal appellant's cellmate, John Allen, standing near "bags of property" on the cell floor. Appellant stood up from his wheelchair and demanded that Allen tell appellant what he was doing with appellant's property. Then appellant raised his cane, and Allen, clutching his fists, "took a fighting stance." Using both hands, appellant swung his cane at Allen at least twice; although it was unclear whether the cane made contact with Allen's body or the cell walls, appellant used enough force to break his cane. Appellant and Allen began to wrestle, both dropping to the floor. Although the officers ordered them to stop, appellant and Allen continued to fight. A third officer, Officer Sanchez, deployed pepper spray.

Licensed vocational nurse Ramot Olowosagba testified that she examined appellant after the incident and found injuries on his face, limbs, and torso.

After conferring with counsel, appellant decided not to testify. Outside the presence of the jury, the court asked appellant whether he wished to exercise his right to remain silent or whether he wanted to testify. Appellant responded, "I have nothing to say, Your Honor." Trial counsel interjected, "I think what he's saying is that he does not wish to take the stand, but maybe the court can clarify." The court asked, "So, you're making

the decision not to testify; is that correct, sir?" Appellant nodded his head. After the court said, "I couldn't hear you," appellant responded, "Yes." The court reiterated, "And are you making that decision freely and voluntarily, sir?" Appellant replied, "Yes, I am, Your Honor." The court then said, "Very good. And, then, the court will honor that request, his request to remain silent."

The jury found appellant guilty of misdemeanor assault under section 240, a lesser included offense to the charged offense of felony assault with a deadly weapon in state prison (§ 4501, subd. (a)).

On March 7, 2017, the court imposed a county jail term of 180 days to run consecutively to his current sentence. The court declined to impose any fees or fines.

Appellant timely appealed.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende, supra,* 25 Cal.3d 436.

By an October 23, 2017 letter, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. On November 2, 2017, appellant filed a supplemental brief in which he listed several contentions and conclusions, but did not provide any specific facts or law to support his claims.

Generally, appellant asserts he was denied a fair trial and his due process rights were violated.

Specifically, appellant claims that trial counsel provided ineffective assistance because counsel did not call the victim and witnesses, whom appellant does not identify, to testify. Appellant states in his supplemental brief, "I ask[ed] for victim [and] all witness[es] to be subpoenaed to court and the attorney refused." Appellant does not say what the testimony of the victim

would have been or how it might have helped in his defense. He does not identify the witnesses he wanted counsel to call nor does he say what their testimony would have been. Thus, appellant fails to demonstrate that trial counsel was ineffective because appellant does not show that an objectively-reasonable defense attorney would have called the victim and the unnamed witnesses to testify. (*Strickland* v. *Washington* (1984) 466 U.S. 668, 687; *People v. Carrasco* (2014) 59 Cal.4th 924, 982.) Appellant provides no facts to show that he was prejudiced in any way by the absence of the victim or the unidentified witnesses. (*People v. Carrasco* (2014) 59 Cal.4th 924, 982; *People v. Bolin* (1998) 18 Cal.4th 297, 334.)

Appellant also claims a conflict of interest with trial counsel. He states that his case was "unimportant" to trial counsel, who did not take his case "seriously." A "criminal defendant is guaranteed the right to the assistance of counsel by the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution. This constitutional right includes the correlative right to representation free from any conflict of interest that undermines counsel's loyalty to his or her client. [Citations.]" (*People v. Doolin* (2009) 45 Cal.4th 390, 417.) Appellant does not provide any facts to show that counsel did not take his case "seriously"; we note that trial counsel successfully sought, and was granted, an in camera hearing for court examination of the files of Correctional Officers Kehres and Estrella, and trial counsel also cross-examined the People's witnesses.

In addition, appellant contends he was forced to "take the Fifth Amendment" to the United States Constitution.[3] While he does not explain what he means, it is reasonably inferred from this statement that appellant wanted to testify on his own behalf, but was prevented from doing so. Of course, appellant has the right to testify on his own behalf. (U.S. Const., 5th, 6th, & 14th Amends.; *Chambers v. Mississippi* (1973) 410 U.S. 284, 294; *People v. Brooks* (2017) 3 Cal.5th 1, 30, as mod. on denial of rehg. May 31, 2017, rehg. den. July 12, 2017.) Nevertheless, review of the record shows that the court asked appellant whether he wanted to testify and, after appellant responded he had nothing to say, the court repeated the question. Appellant had ample opportunity to testify, but appellant declined. Appellant provides no facts regarding his decision not to testify. He provides nothing to show anyone misled him into giving up his right to testify or prevented him from testifying.

Appellant further claims he was denied his "right" to interview the victim. He cites "Accused's Right To Interview Witness Held in Public Custody" (14 A.L.R. 652, § 6; originally published in 1967), which, without citation to any California cases, sets forth the general principle that a defendant may interview a witness held in public custody to prepare a defense. However, appellant misinterprets the treatise. While he is correct that his counsel could have interviewed the victim, no constitutional right is implicated by the lack of such interview. Perhaps appellant meant to refer to the Sixth Amendment to the United States Constitution, which gives every defendant the

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[3] The Fifth Amendment provides, in pertinent part, that no person "shall be compelled in any criminal case to be a witness against himself." (U.S. Const., 5th Amend.)

right "to be confronted with the witnesses against him." However, review of the record demonstrates that appellant was confronted with the People's witnesses against him in court, where his trial counsel cross-examined each prosecution witness. There was no violation of his right to confront witnesses. (*Crawford v. Washington* (2004) 541 U.S. 36, 59; *Bruton v. United States* (1968) 391 U.S. 123, 127.)

In addition, without stating how or when, or providing any other details, appellant makes a broad statement that he was denied a fair trial and his due process rights were violated. Accordingly, having failed to set forth any facts to support these contentions, appellant has failed to demonstrate that these claims have merit.

Appellant claims that appellate counsel was ineffective in failing to file a brief on the merits of his appeal. While appellant lists possible issues, he does not provide facts or law to show that any of these issues has merit. (*Smith v. Robbins* (2000) 528 U.S. 259, 285-286.) Moreover, he has not shown prejudice; he fails to show that if counsel had filed a merits brief, he would have prevailed on his appeal. (*Ibid.*) Finally, although appellant asserts that appellate counsel should have reported trial counsel to the California State Bar, appellant does not give any reasons to support the contention that such a report was required.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant 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, supra,* 528 U.S. at p. 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.*

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