

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILIPPE MENGIBRIA LUTETE,

Defendant and Appellant.

B280761

(Los Angeles County
Super. Ct. No. GA095586)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Affirmed.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Philippe Mengibria Lutete was sentenced to an aggregate state prison term of nine years following a negotiated plea to charges of rape and assault to commit rape in Los Angeles Superior Court case number GA095586¹ and battery by gassing in case number BA445405. Lutete filed a timely notice of appeal challenging the validity of his plea in case number GA095586 and obtained a certificate of probable cause. Lutete's court-appointed appellate counsel notified this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that he was unable to find any arguable issues to assert on appeal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Case Number GA095586

Lutete drove up to one woman on November 26, 2014 and another woman on April 8, 2015 as each was walking alone on the street in the early hours of the morning. On both occasions Lutete urged or forced the woman into his car and took her to his home, where he dragged her to an upstairs bedroom and sexually assaulted her. Lutete attempted to rape his first victim, Eeve G., before she escaped through a second story window and, pursued by Lutete, fled to a neighbor's house. The second victim, Vanessa R., was repeatedly raped and forcibly orally copulated by Lutete. When Vanessa struck Lutete with an ashtray, he pummeled her face. Vanessa fled while Lutete was in the bathroom.

On August 24, 2015 the People filed a nine count information against Lutete, charging him, as to Eeve, with false imprisonment by violence (Pen. Code, § 236, count 1),² sexual

¹ Case numbers refer to Los Angeles Superior Court cases.

² Statutory references are to this code.

battery by restraint (§ 243.4, subd. (a), counts 2 & 9) and assault with intent to commit rape, sodomy or oral copulation (§ 220, subd. (a)(1), counts 7 & 8), and, as to Vanessa, with rape (§ 261, subd. (a)(2), counts 3 & 4), kidnapping to commit rape (§ 209, subd. (b)(1), count 5) and forcible oral copulation (§ 288a, subd. (c)(2)(a), count 6). The information specially alleged as to count 3 that Lutete had personally inflicted great bodily injury (§ 667.61, subds. (a) & (d)), as to count 4 that he had personally used a dangerous or deadly weapon (§ 667.61, subds. (a) & (e)), as to counts 3 and 4 that in kidnapping Vanessa his movement of her had substantially increased the risk of harm to her over and above that level of risk necessarily inherent in the underlying offense (§ 667.61, subds. (a) & (d)), and as to counts 3 through 6 that he had committed the offenses against Vanessa while released from custody on bail for the offenses committed against Evee (§ 12022.1).

On August 31, 2015 Lutete pleaded not guilty and not guilty by reason of insanity and denied the special allegations.

On February 3, 2016, prior to trial, Lutete's counsel declared a doubt as to Lutete's competence. The trial court ordered the proceedings suspended, scheduled a competency hearing and appointed mental health experts to evaluate Lutete's competence under section 1368.

Following a competency hearing on April 1, 2016, the trial court found Lutete not mentally competent to stand trial and ordered him to a state mental hospital.

2. Case Number BA445405

On February 25, 2016, during an interview at the Men's Central Jail, Lutete spat at Los Angeles County Sheriff's Deputy Brandon Manning, hitting his face. On May 10, 2016 Lutete was

charged in an information with battery by gassing of a custodial officer (§ 243.9).³ Lutete pleaded not guilty. The same day the trial court found Lutete not mentally competent to stand trial, suspended criminal proceedings and ordered him committed to a state mental hospital.

3. Plea Proceedings After Certification of Competence

On October 18, 2016 Lutete was returned from the state mental hospital with a certification he was competent to stand trial in both pending cases.

On December 12, 2016 Lutete pleaded no contest to one count of rape and one count of assault with intent to commit rape, sodomy or oral copulation in case number GA095586 in return for a sentence of eight years in state prison. The trial court scheduled the sentencing hearing for January 5, 2017. The hearing was thereafter continued to January 11, 2017.

On January 4, 2017 Lutete pleaded no contest to battery by gassing in case number BA445405 and requested immediate sentencing with the understanding he might be subject to resentencing when sentence was imposed in case number GA095586. The court imposed the middle term of three years in state prison (§ 243.9, subd. (a)).

In each case, at the time he entered his plea, Lutete was advised of his constitutional rights and the nature and consequences of the plea, which he stated he understood. Lutete's counsel joined in the waivers of his constitutional

³ Section 243.9, subdivision (b), defines "gassing" to include intentionally causing to be placed or thrown upon the person of another "any human excrement or other bodily fluids or bodily substance" that results in actual contact with the person's skin or membranes.

rights. The trial court expressly found Lutete's waivers, plea and admissions were voluntary, knowing and intelligent.

At the January 11, 2017 sentencing hearing Lutete orally moved to withdraw his plea in case number GA095586. When the trial court inquired, Lutete's counsel responded Lutete wanted to renegotiate his plea agreement. The trial court denied the motion, vacated the sentence in case number BA445405, designated case number GA095586 as the lead case and imposed sentence in both cases. Lutete was sentenced in accordance with the negotiated plea agreement in case number GA095586 to the upper term of eight years for rape (§ 264, subd. (a)) and a concurrent term of six years, the upper term, for assault with intent to commit rape, sodomy or oral copulation (§ 220, subd. (a)(1)). The court resentenced Lutete in case number BA445405 to a consecutive one-year term (one-third the middle term) for battery by gassing.

The court awarded Lutete presentence custody credit of 748 days in case number GA095586 and 280 days in case number BA445405 and ordered Lutete to pay statutory fines, fees and assessments. The remaining counts and special allegations in case number GA095586 were dismissed pursuant to the negotiated plea agreement.

Lutete filed a timely notice of appeal from the judgment in case number GA095586 and checked the preprinted box "challeng[ing] the validity of the plea or admission." The trial court granted Lutete's request for a certificate of probable cause without explanation.

DISCUSSION

We appointed counsel to represent Lutete on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On September 21, 2017 we advised Lutete he had 30 days to submit a brief or letter raising any grounds for appeal, contentions or arguments he wanted us to consider. We have received no response.

We have examined the record and are satisfied that appellate counsel for Lutete has complied with his responsibilities and there are no arguable issues. (See *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, supra*, 25 Cal.3d at pp. 441-442.) The record fails to disclose any valid basis for Lutete's motion to withdraw his plea. (See *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1207-1208.)

DISPOSITION

The judgment in case number GA095586 is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

BENSINGER, J.*

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