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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NINH DINH PHAM,

Defendant and Appellant.

B272052

(Los Angeles County  
Super. Ct. No. TA134944)

APPEAL from a judgment of the Superior Court of Los Angeles County. Teresa P. Magno, Judge. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant and appellant Ninh Dinh Pham was convicted in 1993 of committing a lewd or lascivious act on a child under the age of 14, in violation of Penal Code section 288, subdivision (a).<sup>1</sup> In 2016 defendant was convicted of failing to update his annual registration as a sex offender, in violation of section 290.12, subdivision (a), and resisting, obstructing, or delaying a peace officer, in violation of section 148, subdivision (a)(1). The trial court initially sentenced defendant to 16 months in state prison, but later recalled the sentence pursuant to section 1170, subdivision (d), and placed defendant on probation for three years.

Defendant filed a timely notice of appeal. This court appointed counsel for defendant on appeal. Appointed counsel filed a brief raising no issues, but requesting this court to independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised by letter from this court of his right to file a supplemental brief within 30 days.

Defendant filed a four page, single spaced supplemental brief, arguing that his conviction in 1993 was based on false testimony by his daughter that she had been molested. His daughter admitted she had fabricated the molestation claim, defendant's conviction was only of a misdemeanor, and his defense attorney told him the case "has nothing to do with sex offender registration." He was

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

wrongly forced to register as a sex offender in 1997, but it was clarified that he did not have to register when court papers were certified with a “blue stamp.” Defendant was thrown to the floor and knocked unconscious without provocation when arrested in 2014. The current case was a “malicious prosecution” to cover up the unlawful force used by the officer. Finally, the prosecutor purposely acted to deny defendant various constitutional rights and by ordering what evidence defendant, who represented himself, could present at trial.

We have completed our independent review of the record, considered defendant’s supplemental brief, and conclude there are no arguable appellate issues. Prior to trial, the court appointed an expert to ensure that defendant was competent to stand trial and represent himself. The court questioned defendant at length and advised him of the consequences of self-representation before permitting him to proceed in *propria persona*. The court fully considered defendant’s pretrial motion for dismissal. Throughout trial the court patiently explained the proceedings to defendant in an attempt to keep him focused on the relevant issues.

The convictions are supported by substantial evidence that defendant failed to register as a sex offender, as required by law, and that he resisted arrest. Defendant had registered from 1997 through 2013. Those registration forms included defendant’s initials on a form indicating he understood his obligation to register for life. Defendant failed to register in a timely fashion in 2014, resulting in

sheriff's deputies going to defendant's residence months prior to his arrest in this case to give a courtesy reminder to register. Despite the courtesy reminder, defendant failed to register. Deputies returned six months later to take defendant into custody. Defendant said, "If you touch me, I'm gonna fucking kick your ass." Defendant violently resisted arrest.

Defendant's supplemental brief presents no viable appellate contentions. His complaints regarding the 1993 conviction under section 288, subdivision (a), including factual innocence, are not appropriately raised in an appeal from a 2016 conviction of a different offense. Defendant's persistent contention, both in the trial court and on appeal, that he was convicted of a misdemeanor and was not required to register as a sex offender, are incorrect as a matter of law. Defendant was obligated to register under section 290, without regard to the fact that the sentencing court in 1993 did not order registration as a condition of probation. (*People v. Castellanos* (1999) 21 Cal.4th 785, 791-799, 802-805 [registration as a sex offender is not punishment and may be imposed as to crimes committed prior to effective date of statute requiring registration].) Finally, the prosecutor did not dictate what evidence defendant could present, or overreach in any way. The record instead reflects that the prosecutor, and the court, worked with defendant to ensure that the admissible evidence he possessed was introduced at trial.

Given this record, we are satisfied that appellate counsel has fulfilled his obligation on appeal of providing a basis for adequate and effective appellate review. The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259, 284.)

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KRIEGLER, Acting P.J.

We concur:

BAKER J.

KIN, 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.