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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY ELDINE COLEMAN,

Defendant and Appellant.

B244384

(Los Angeles County
Super. Ct. No. MA053399)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Naranjo, Judge. Affirmed.

Larry Eldine Coleman, in pro per.; Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On July 31, 2012, on the eve of trial, the prosecution agreed to dismiss a charge of attempted murder and Larry Coleman entered a plea of nolo contendere to the four counts remaining: one count each of criminal threats (Pen. Code, § 422);¹ inflicting injury on a spouse/cohabitant (§ 273.5, subd. (a)); child abuse (§ 273a, subd. (a)); and assault (§ 245, subd. (a)(1)). Coleman also admitted the allegations that he inflicted great bodily injury on his wife and his stepdaughter (§ 12022.7, subs. (a) & (e), and that he personally used a deadly and dangerous weapon as to both (§ 12022, subd. (b)(1)). The information had charged that Coleman had two 2005 convictions in Kansas that qualified as prior strikes, but the prosecution dismissed the strike allegations after concluding that the convictions did not qualify as strikes.²

The trial court sentenced Coleman to 12 years, as follows: six years for the child abuse count, enhanced by one year for the weapon use and three years for the infliction of great bodily injury; and one year plus a one-year enhancement for the injury to spouse count. The court stayed the sentences on the two remaining counts pursuant to section 654.

At a preliminary hearing, Coleman's wife testified that on July 7, 2011, she exchanged words with Coleman, and he hit her with a baseball bat twice on the leg. During the second strike, he said, "Well, I'm going to go to jail; so I might as well kill you." Her daughter jumped on his back to stop him. After turning the bat on his stepdaughter, Coleman again hit his wife with the baseball bat, first in the face and then, after she fell, in the back of the head. Coleman's wife received surgery on her eyes and her knees and seven stitches on the back of her head.

¹ All subsequent statutory references are to the Penal Code.

² At Coleman's counsel's request, the court conducted a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, to discuss Coleman's complaints regarding counsel, including Coleman's dissatisfaction with counsel's (ultimately successful) efforts to have the prior strike allegations dismissed. Coleman decided to continue with counsel's representation.

Coleman's 17-year-old stepdaughter testified that she heard screaming and went into her mother's bedroom to find her stepfather ready to swing the bat. She jumped on Coleman's back. He pushed her off and hit her in the ear with the bat. She ran out of the bedroom, got her baseball bat and called 911, went back to the bedroom, and hit Coleman on the back. He then hit her with his bat on the back of her head, causing a gash that required four staples.

Coleman filed a timely notice of appeal. We appointed counsel to represent Coleman. After examining the record, counsel filed an opening brief raising no issues and asking this court to independently review the entire record. Coleman filed three supplemental letter briefs, arguing he was not in his "right state of mind" when he pleaded, his counsel provided ineffective assistance, and the court erred at sentencing. Respondent did not file a brief.

Our review of the entire record shows that at the hearing when Coleman entered his plea, he was given time to consult with his counsel. Coleman represented that he had enough time to talk to counsel, understood the charges and the constitutional rights he would give up if he pleaded, understood the agreement underlying his plea after discussion with his counsel, and was pleading freely and voluntarily. There is nothing in the record to support his bare assertion on appeal that he was not in his right mind.

A successful claim of ineffective assistance of counsel requires a showing, by a preponderance of the evidence, of objectively unreasonable performance by counsel and prejudice, that is, a reasonable probability that, but for counsel's errors, appellant would have obtained a more favorable result. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216–219.) Coleman must overcome presumptions that counsel was effective and that the challenged action might be considered sound trial strategy. (*In re Jones* (1996) 13 Cal.4th 552, 561.)

Coleman argues that his counsel misled him by telling him "if [he] take[s] this plea, since [he has] no strikes [his] sentence would be in the single digits." The record transcript shows that counsel represented to the court that the prosecution made an offer of 15 years (striking the alleged priors), and stated: "We do not believe it is worth

anything within the double digits.” The next day, the prosecutor stated that with the dismissal of the attempted murder count, the offer was 12 years. A conviction on all counts would result in more than 20 years to life on the attempted murder count alone, before adding the sentences for the remaining counts. Coleman’s counsel represented that he had explained to Coleman that he was working to get the prior strikes dismissed, and stated: “I was hopeful that the People would consider a 10-year disposition, which I believe Mr. Coleman—at least I got the impression—was inclined to take, although I might be wrong. But he’s nodding affirmatively that he was willing to take the 10. I’m not in his shoes, your honor. [¶] . . . [¶] . . . I think Mr. Coleman’s ceiling is 10, and [the prosecutor’s] floor is 12, so I’m in the gap. [¶] I think it’s worth 10 or less, but it’s not my place. [The prosecutor] will tell you I’ve been fighting for that for weeks now [¶] At that point my advice to Mr. Coleman was, whether I like it or not, that he should be taking that offer.” The court commented: “The best you can do for Mr. Coleman is try and beat down that offer, and you did. You got it down from potentially more than 27 to life down to a fixed 12 years, which he’ll do 85 percent of, which means he’s going to get out somewhere around the 10-year mark.” Counsel responded: “I think it will be . . . about 10-and-a-half.” After further discussion, counsel asked to talk to Coleman in the interview room. After a recess, Coleman accepted the offer and entered his plea of nolo contendere after proper advisement by the court, stating that other than the agreement, no one promised anything else to get him to plead.

The record demonstrates that while his counsel argued for a sentence of 10 years or under, the lowest offer was 12 years, which Coleman accepted after consulting with counsel at the hearing. There is no evidence of unreasonable conduct by counsel, who argued vigorously for a lower sentence. Counsel’s tactical decision to recommend acceptance of the 12-year offer was not unreasonable or prejudicial.

Coleman argues that his counsel would not contact his wife “and get the full story.” Coleman’s wife testified at the preliminary hearing. Counsel argued that while Coleman’s wife would not deny at trial that he hit her, the testimony showed that

Coleman's wife provoked the attack. The record gives no indication that counsel did not adequately investigate.

Finally, Coleman argues that he was given a two-year prison prior enhancement for serving a one-year prison term in Kansas. As the abstract of judgment reflects, Coleman did not receive any enhancements for prior prison terms.

We have reviewed the entire record. Coleman has not demonstrated, and cannot demonstrate from the record, that Coleman's plea was not voluntary, that counsel was ineffective, or that the trial court erred in imposition of Coleman's sentence. We are satisfied that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109; *People v. Wende* (1979) 25 Cal.3d 436, 441–442.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.