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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY RAY MCCALL,

Defendant and Appellant.

B288857

(Los Angeles County
Super. Ct. No. NA101490)

APPEAL from a judgment of the Superior Court of Los Angeles County. Judith Levy Meyer, Judge. Affirmed.

Tracy J. Dressner, under appointment by the California Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Anthony McCall (defendant) was convicted of first degree murder (Pen. Code, § 187, subd. (a))¹ (count 1); kidnapping (§§ 207, subd. (a), 208, subd. (b)) (count 2); four counts of willful, deliberate, and premeditated attempted murder (§§ 664, 187, subd. (a)) (counts 3 through 6); and attempted kidnapping (§§ 664, 207, subd. (a), 208, subd. (b)) (count 7). The jury found true that, as to counts 1 through 5, defendant discharged a firearm causing great bodily injury (§ 12022.53, subd. (d)); as to counts 3 through 6, defendant inflicted great bodily injury on the victims (§ 12022.7, subd. (a)); and as to counts 6 and 7, defendant used a deadly and dangerous weapon (§ 12022, subd. (b)(1)).² The trial court sentenced defendant to 141 years and eight months to life imprisonment, and ordered him to pay restitution of \$16,804.51 to the victims (§ 1202.4, subd. (f)) and a restitution fine of \$10,000 (§ 1202.4, subd. (b)).³ We affirm defendant's conviction and sentence.

Defendant filed a timely appeal, and we appointed counsel to represent him on appeal. Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 959, raising no issues. On October 11, 2018, we notified

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Pursuant to §§ 1170.1, subds. (f) & (g) and 12022.53, subd. (f), the court did not impose the enhancement for discharge of a firearm with respect to count 2, and imposed but stayed the great bodily injury allegation as to counts 3 through 5.

³ The court also imposed a parole restitution fine of \$10,000, which was stayed. (§ 1202.45.)

defendant that he had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Defendant filed a letter on November 1, 2018, requesting that new appellate counsel be appointed, which we denied on November 2, 2018. Defendant then filed a letter brief on November 13, 2018,⁴ contending that the record does not support the judgment and that his counsel was constitutionally ineffective for not sufficiently cross-examining witnesses at trial.

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied that no arguable issue exists which would call into question the validity of the convictions or sentence.

The convictions and enhancements are supported by substantial evidence. Gisele-Angelique D'Milian (D'Milian) masterminded a scheme to convince her boyfriend that he fathered two children by her, and she enlisted defendant to kidnap two infants for the ruse.

D'Milian was recorded on surveillance footage on January 3, 2015, following a woman and her three-week-old daughter getting off a bus in Long Beach. Defendant's cell phone records confirmed he was also in the same area. Defendant knocked on the woman's front door and shot her brother-in-law when he opened the door. Defendant passed over the brother-in-law's two-year-old daughter and went upstairs to retrieve the newborn.

⁴ The 30-day deadline fell on Saturday, November 10, 2018, and the following Monday was a holiday. As such, defendant's supplemental brief was timely filed on Tuesday, November 13, 2018. (Code Civ. Proc., § 12, subds. (a) & (b).)

Defendant shot the woman's fiancé in the leg and then shot the woman in the face, shattering her jaw, as she pleaded for her child. Defendant left the house in Long Beach with the newborn, purchased baby formula and bottles later that night in Riverside, and continued to drive south toward San Diego. The next morning, the newborn's body was found inside a trash bag in a dumpster in Imperial Beach, close to the U.S.-Mexico border. Forensic evidence confirmed that defendant's DNA was found on the trash bag tie, and on items disposed of in other bags in the dumpster. The woman, her fiancé, and brother-in-law identified defendant in photographic lineups as having "similar eyes" as the suspect and that he "looked like" the suspect.⁵

A few weeks later, D'Milian asked an acquaintance if she would allow D'Milian to pretend that the acquaintance's four-month-old son was her own. On February 6, 2015, D'Milian took the acquaintance and her son to a hotel in El Segundo, and the acquaintance fell asleep after D'Milian left the room. A man entered the room with a key, attacked the acquaintance with a metal bat, and strangled her until she lost consciousness. Two hotel employees were alerted to the room, and the man fled without the baby. The employees later identified defendant, at the preliminary hearing, as the man who ran out of the hotel room.

In March 2015, defendant was recorded on wiretapped conversations telling one of D'Milian's associates, Todd Boudreaux (Boudreaux), that he "did it out of the sheer kindness of my heart. [S]he was talking . . . [about] what could possibly be

⁵ D'Milian pled no contest to the murder of the newborn and the attempted murder of the woman's fiancé and brother-in-law.

made, but I wasn't . . . driven on that." Expecting that defendant would have been "promised" something for the deeds, Boudreaux stated, "Well, this one, the first one, you got to do on initiation. The baby – I mean, the second one, you get paid on the second one."

Viewed in the light most favorable to the verdict, this evidence is sufficient to support defendant's convictions of all of the charged crimes and allegations. (*See People v. Gonzalez* (2012) 54 Cal.4th 643, 653.)

We also have not identified any procedural defects with the trial or sentencing. The jury was properly instructed on all of the charged offenses and allegations, as well as on applicable legal principles such as eyewitness identification. The trial court's evidentiary rulings also were within its discretion. Additionally, when sentencing defendant, the court anticipated the legislative amendment to section 12022.53 granting trial courts discretion to strike the previously mandatory enhancement for discharge of a firearm causing great bodily injury, and declined to exercise that discretion due to the circumstances of the offenses. The court also identified the factors supporting its determination that the sentences be served consecutively. (*See* § 1170.1; Cal. Rules of Court, rules 4.421, 4.425.)

Based on this review of the record and defendant's letter brief, we conclude that trial counsel's representation of defendant was not deficient. (*See Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 692.)

Because we have determined that there are no arguable issues, we are satisfied that defendant's attorney has fully complied with her responsibilities and affirm defendant's convictions and sentence. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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ASHMANN-GERST, Acting P. J., CHAVEZ, J., HOFFSTADT, J.