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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CRUZITO HERRERA CRUZ,

Defendant and Appellant.

2d Crim. No. B286060  
(Super. Ct. No. 17CR07533)  
(Santa Barbara County)

Cruzito Herrera Cruz appeals from the judgment entered after he pled no contest to felony vandalism (Pen. Code, § 594, subd. (b)(1))<sup>1</sup> and interference with a wireless device (§ 591.5). Pursuant to the negotiated plea, the trial court dismissed three counts for dissuading a witness (§ 136.1, subd. (b)(1)), elder abuse (§ 368, subd. (c)) and battery (§ 242), and granted probation subject to the condition that appellant pay a \$300 restitution fine (§ 1202.4, subd. (b)), a \$30-a-month

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

probation supervision fee, a \$80 court security fee (§ 1465.8), and a \$60 criminal conviction assessment fee (Gov. Code, § 70373). A \$300 probation revocation fine was imposed and stayed. (§ 1202.44.)

We appointed counsel to represent appellant in this appeal. After counsel's examination of the record, he filed an opening brief in which no issues were raised.

On March 13, 2018 we advised appellant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. On April 30, 2018, appellant filed a supplemental brief stating, among other things, that an Emergency Protective Order wrongly issued, that appellant was denied effective assistance of trial counsel, and that the trial court erred in imposing a travel restriction as a term of probation.

These contentions are not supported by the record which shows that the negotiated plea was knowingly and voluntarily made, that there was a stipulated factual basis for the plea, and that appellant was provided effective representation. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *People v. Bolin* (1998) 18 Cal.4th 297, 333.)

The record reflects that appellant was arrested on July 23, 2017 after appellant argued with and kicked his sister (B.G.), smashed B.G.'s phone when she threatened to call 911, fought B.G.s' son, and punched his 74-year-old mother (M.H.) in the mouth when she tried to intervene. An Emergency Protective Order issued that same day, ordering appellant to move out of the residence. (§ 136.2.) The police report reflects that appellant was served with a copy of the Emergency Protective Order and that appellant said that he understood the terms of the order and

did not plan on violating them. On July 25, 2017, a Criminal Protective Order issued (§ 136.2), ordering appellant to stay away from his mother and sister.

Before sentencing, appellant brought a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118) but withdrew the motion after the trial court and prosecution agreed to strike and/or modify certain probation terms. Appellant entered into a written plea agreement which provided for, among other things, that appellant comply with the protective order, make full restitution, and comply with terms and conditions as recommended by probation. The written plea agreement, which was initialed and signed by appellant, stated that the trial court could consider the police and probation reports as a factual basis for the plea, and that “on 7/23/17 in Santa Barbra County I maliciously and unlawfully smashed an I-phone 7 worth over \$400 in value.” It was further agreed that charges for dissuading a witness (count 1; § 136.1, subd. (b)(1)), elder abuse (count 3; § 368, subd. (c)), and battery (count 5; § 242) would be dismissed but subject to a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754) for purposes of restitution and sentencing.

At sentencing, the trial court terminated the Criminal Protective Order, and ordered as a term of probation that appellant have no contact with B.G. and not molest, annoy, threaten or harm his mother, M.H. As a term of probation, appellant further agreed not to leave Santa Barbara County or the state without the permission of his probation officer. After sentencing, appellant personally signed the Sentencing and Probation Order which states: “I have read and fully understand the above terms and condition and accept them.”

We have reviewed the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Thomas R. Adams, Judge

Superior Court County of Santa Barbara

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California Appellate Project, Jonathan B. Steiner,  
Executive Director, Richard B. Lennon, Staff Attorney, under  
appointment by the Court of Appeal.

No appearance for Respondent.