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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BRENTON JAMES SHEELEY,

Defendant and Appellant.

B259234

(Los Angeles County
Super. Ct. No. PA079491)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dalila Corral Lyons, Judge. Affirmed.

Brenton James Sheeley, in pro. per., and Cyn Yamashioro, under appointment by
the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

After waiving his right to a preliminary hearing, Brenton James Sheeley¹ was charged in an information with possession of a controlled substance (heroin) (Health & Saf. Code, § 11350, subd. (a)), resisting an executive officer (Pen. Code, § 69) and misdemeanor vandalism (Pen. Code, § 594, subd. (a)). As to the felony counts, the information specially alleged Sheeley had served five separate prison terms for felonies under Penal Code 667.5, subdivision (b).² Sheeley pleaded not guilty and denied the special allegations.

At trial, Los Angeles Police Officer Matthew Crumlish testified that on the night of January 19, 2014, he and his partner, Officer Patton, were on routine patrol when they noticed Sheeley commit a series of traffic violations before pulling over to the side of the road. The officers drove up behind Sheeley's car, activated their emergency lights and called for the assistance of additional officers. Crumlish and Patton then got out of the patrol car, intending to approach Sheeley's car. At that point, both Sheeley and a woman, later identified as Glory Varela, stepped out of Sheeley's car. When Sheeley saw the officers, he returned to his car. It appeared Varela was going to walk away, but she then returned to Sheeley's car. As the officers watched, Sheeley placed Varela in a "head lock."

The officers ordered Sheeley out of his car and forced him to the ground. They handcuffed Sheeley and placed him in the backseat of the patrol car. Sheeley's breath smelled of alcohol. His eyes were glassy and bloodshot, and his speech was slurred and incoherent. Officer Crumlish examined Sheeley's eyes for the presence of horizontal gaze nystagmus and concluded Sheeley was under the influence of alcohol. Sheeley refused to perform additional field sobriety tests. He was arrested for driving under the influence of alcohol or drugs and placed in the backseat of the patrol car.

¹ Sheeley's surname appears as "Shelley" only on the information.

² The trial court granted the People's motion to strike a special allegation Sheeley had committed the offenses while released from custody on bail under Penal Code section 12022.1.

Moments later, Sheeley began banging his head against the rear passenger window of the patrol car until another officer told him to stop. Sheeley turned his body and began kicking the same window, causing the glass to come loose from the frame. To stop Sheeley from kicking any further, the officers decided to place a hobble device on him.³ When Officer Patton opened the passenger door, Sheeley used both feet to kick at the officer, which caused Sheeley to fall out of the patrol car and onto his back on the ground. Officer Cerniglia placed his knee on Sheeley's chest to restrain him while Patton secured the hobble device. After Sheeley was returned to the patrol car, he complained of chest pains. The police called an ambulance, which transported Sheeley to the hospital. A search of Sheeley's car yielded heroin.

Sheeley did not testify in his defense. Varela, his girlfriend, testified that after Sheeley hit his head against the window of the patrol car, four to six officers pulled him out of the car by his legs and Sheeley landed on his back on the ground. Sheeley was yelling and crying in pain as one of the officers put his knee on Sheeley's chest.

The jury found Sheeley guilty of resisting an executive officer and misdemeanor vandalism, but acquitted him of possession of heroin. In a bifurcated proceeding, Sheeley admitted four of the prior prison term allegations.⁴

Prior to sentencing, the trial court heard and denied the defense motion for a mistrial. The court sentenced Sheeley to serve a six-year term in county jail, consisting of the two-year middle term for resisting an executive officer, plus four one-year terms for the prior prison term enhancements, and a concurrent one-year term for misdemeanor vandalism.

We appointed counsel to represent Sheeley on appeal. After examination of the record, counsel filed an opening brief raising no issues. On May 22, 2015, we advised Sheeley he had 30 days within which to personally submit any contentions or issues he

³ A hobble device consists of thick rope, which is used to bind and immobilize the ankles of individuals to stop them from kicking or otherwise moving their feet.

⁴ Of the five prior convictions alleged, two resulted in the same prison term.

wished us to consider. On June 18, 2015, we received a three-page handwritten response in which Sheeley claimed his retained trial counsel provided constitutionally ineffective assistance. On July 8, 2015, we received an additional one-page handwritten response in which Sheeley claimed the People's witnesses lied at trial.

To the extent Sheeley is challenging the sufficiency of the evidence, Officer Crumlish's testimony constitutes substantial evidence to support the jury's finding Sheeley committed the crimes of resisting an executive officer and misdemeanor vandalism; determining Crumlish's credibility was the exclusive province of the jury. (See *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Nothing in the record suggests Crumlish's testimony was inherently improbable or physically impossible. (See *People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.)

As for Sheeley's claim his trial counsel rendered constitutionally ineffective assistance, the issue cannot be addressed on appeal because it relies on matters outside the appellate record. If cognizable at all, the claim must be pursued by a different, appropriate procedure. (See *Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

We have examined the record and are satisfied Sheeley's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*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, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.