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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.

BYRON MONTENEGRO,

Defendant and Appellant.

B272204

(Los Angeles County
Super. Ct. No. MA065738)

APPEAL from a judgment of the Superior Court of Los Angeles County, Shannon Knight, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Byron Montenegro (defendant) of felony arson for setting the mattress in his prison cell on fire. Defendant's appointed attorney on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that raised no issues and asked us to independently review the record. This court invited defendant to personally submit a supplemental brief and he has done so, presenting ten contentions (without citation to the record or pertinent authority) that in his view warrant reversal. In the paragraphs that follow, we summarize the facts and explain why we reject defendant's contentions.

In May 2015, the District Attorney for Los Angeles County charged defendant with violating Penal Code section 451(d),¹ arson of property of another. The information additionally alleged defendant had sustained two prior convictions in 2011 (in the same criminal case) that qualified as serious or violent felonies under the Three Strikes law (§§ 667(b)-(j), 1170.12). The information further alleged defendant had four prior convictions for which he served prison terms within the meaning of section 667.5(b). The prosecution later amended the information to allege sentencing enhancements pursuant to section 667(a)(1) for the same 2011 convictions alleged in connection with the Three Strikes law allegations.

The case was tried to a jury. A prison correctional officer and a prison nurse testified they saw the mattress in defendant's single-person cell on fire. The officer testified defendant admitted starting the fire in the mattress and a prison psychologist testified he heard defendant say "he was going to

¹ Undesignated statutory references that follow are to the Penal Code.

burn this mother-fucker down” immediately after the fire had been extinguished.

Defendant’s trial attorney cross-examined the correctional officer and the prison psychologist, eliciting testimony helpful to the defense from each. Defendant also testified in his own defense. He claimed he set some of his own personal papers on fire in his cell, not the prison mattress. According to defendant, he set the papers on fire in an effort to harm himself and obtain medical attention from prison personnel.

The jury found defendant guilty. At a subsequent bench trial, the court found all the alleged prior conviction enhancements true, with the exception of one of the alleged section 667.5(b) enhancements for a 2009 violation of section 4573.6 (possession of controlled substances, or controlled substance paraphernalia, in prison). The court sentenced defendant to an indeterminate term of 25 years to life pursuant to the Three Strikes law, plus a consecutive determinate term of eight years in prison (five years for one of the section 667(a)(1) enhancements and one year each for the three section 667.5(b) enhancements the court found true). The trial court awarded defendant 212 days of presentence credit and imposed fines, fees, and assessments.

Defendant’s supplemental brief is comprised entirely of conclusory assertions that his trial attorney was constitutionally ineffective. Defendant claims his attorney: never provided him with an explanation as to why his status in prison was “reduced from Suicide Watch to Suicide Precaution”; never addressed inconsistencies in the correctional officer’s accounts of the arson incident; declined without explanation to call witnesses suggested by defendant; did not insist on the introduction of the actual

burned mattress into evidence; failed to address (or explain to defendant) purported hearsay testimony by the correctional officer; failed to explain to defendant how he could be convicted for burning his own personal papers; failed to explain to defendant “why Article 24 was not presented in court, when [defendant] had so requested, which would have indicated that notification to the Fire Chief for an arson investigation is required”; never explained why the jury was told defendant was previously found guilty of possession of ammunition; disregarded defendant’s “jury selections” and instead “settled for the first batch of jurors”; and misled defendant by “telling [him] from the start[] that we were going to go with a plea of NGI” Several of these assertions are meritless on their face, and each of them is inadequate to demonstrate, for purposes of an ineffective assistance of counsel claim raised on direct appeal, that the representation defendant received during trial fell below an objective standard of reasonableness. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-88; *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.) Because defendant has not satisfied his burden to demonstrate deficient performance, we need not discuss whether and why his claims would also be insufficient to establish prejudice under *Strickland*.

Having considered defendant’s contentions of error and conducted our own examination of the record, we are satisfied defendant’s appellate attorney has complied with the responsibilities of counsel and no arguable issue exists. (*Wende*, 25 Cal.3d at 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24.)

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.