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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RALPH ANTHONY PALMA,

Defendant and Appellant.

B268956

(Los Angeles County
Super. Ct. No. GA094339)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Jared D. Moses, Judge. Affirmed.

Joseph R. Escobosa, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Ralph Palma appeals a final judgment of conviction and sentence after the trial court found that he violated his probation. Appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

STATEMENT OF THE CASE

Background

In October 2014, in the criminal case giving rise to Palma's present appeal (L.A. Super. Ct., case No. GA094339), the People filed an information jointly charging Palma and another defendant with attempted second degree robbery (count 1; Pen. Code, §§ 664/ 211)¹ and assault by means likely to produce great bodily injury (count 2; § 245, subd. (a)(4)). As to both counts, the information alleged that Palma personally inflicted great bodily injury. (§ 12022.7, subd. (a).) Further, it was alleged that Palma had five prior felony convictions with a prison term. (§ 667, subd. (b).)²

On December 3, 2014, Palma waived his constitutional trial rights and pled no contest to aggravated assault as charged in count 2, and admitted the great bodily injury allegation. The trial court suspended imposition of sentence and placed Palma on three years of probation with its ordinary terms, including that he "not use or threaten to use any force or violence on any person." The attempted robbery alleged in count 1 was dismissed.

¹ All further references are to the Penal Code.

² The evidence presented at the preliminary hearing showed that Palma and his cohort approached the victim shortly after he purchased a six-pack of beer at a gas station store, and asked him if he would give them a beer. When the victim did not agree, they surrounded him and told him that they would hurt him if he did not hand over the beer. As the victim was complying, he accidentally dropped the six-pack on the ground, and one of the bottles broke. Palma and the other man got angry and beat up the victim. He was transported from the scene in an ambulance.

In May 2015, the trial court revoked Palma's probation, apparently after he was arrested for new offenses. A probation violation hearing was set and trailed the outcome of the case on the new charges. (L.A. Super. Ct., case No. GA096247.) In the new case, Palma was facing two counts of making criminal threats.

In June 2015, defense counsel declared a doubt as to Palma's competency in the new case. The court suspended the proceedings in both cases.

In August 2015, after Palma had been found competent to stand trial in the new case, the trial court set Palma's probation violation hearing to be heard simultaneously with the preliminary hearing in the new case.

On October 8, 2015, at the time set for Palma's joint probation violation hearing and preliminary hearing, Palma's counsel moved to bifurcate the two matters. Palma's counsel argued: "I'm not prepared to proceed with the probation violation hearing. And part of the reason is [that] Mr. Palma has a right to testify. . . . And if he were to testify at the probation violation hearing, then that would jeopardize his right against self-incrimination at this point on the pending . . . charges [in case No. GA096247]. . . . So, if the court conducts the probation violation hearing now and Mr. Palma feels the need to testify on his behalf, then the court is, in essence, making him waive his right against self-incrimination for the trial matter" Following a series of short exchanges with the trial court, Palma's counsel suggested that the probation violation hearing could be addressed by the court at the time of trial in the new case: "I'm saying we conduct the probation violation hearing concurrently with the trial when Mr. Palma then has a right to get up and testify and defend himself, not only on the probation violation hearing, but also on the pending case. . . . What I'm saying is it just makes more sense for judicial economy, which is important, but primarily it makes more sense to protect Mr. Palma's right against self-incrimination [in the new case] while balancing his right to testify on his behalf [in the probation matter]. It makes more sense to have him testify and to conduct both hearings in one proceeding."

After listening his counsel's arguments, the trial court denied Palma's motion to bifurcate, ruling it was appropriate to proceed with both hearings at the same time.

The Testimony at the Joint Probation Violation Hearing and Preliminary Hearing

Jennifer Aery testified that she worked as a bartender at the Crest Lounge in Temple City. On the evening of August 29, 2015, Aery and an off-duty Los Angeles County Sheriff's Department Deputy, James Johnson, were outside of the bar having a cigarette when Palma approached the area. Aery recognized Palma; she had seen him in the bar a few days earlier. As Palma neared the back door of the bar, he mumbled something to the effect that he hated Temple City Sheriffs because they are constantly harassing him. Aery told Johnson that she did not want Palma inside of the bar. When Johnson told Palma that Aery did not want him inside of the bar, Palma told Johnson that he was a "stupid fucking white boy" and began digging into his pockets. Palma pulled a cell phone from his pocket and told Johnson, "My brother is a truck driver. . . . I'll call him and he'll kill you." Johnson remained at the back door and told Palma that he was not allowed into the bar. Palma told Johnson that he (Palma) was from the "Tres Lomas" gang. Palma told Aery that he knew who she was and then pointed at her and said, "I will come back here and shoot the place up." After the confrontation with Aery and Johnson, Palma left. Palma's threats caused Aery to fear for her safety.

Johnson testified that he had prior contacts with Palma during the course of his duties as a Sheriff's Department deputy. On the night of August 29, 2015, Johnson smelled a strong odor of alcohol on Palma. Palma kept pulling his phone out of his pocket, "as if drawing . . . a gun." Palma threatened to have his brother, who was a truck driver, "come down . . . take everybody out" and "take [Johnson] out." Palma's statements caused Johnson to fear for his safety and the safety of the people inside the bar.

At the conclusion of the joint probation violation hearing and the preliminary hearing, the trial court found Palma in violation of probation, and found the evidence sufficient to believe that he had committed the crime of making criminal threats. As to the probation case, the court denied Palma's request to reinstate probation. The court

awarded Palma a total of 596 days of presentence custody credits. The court ordered usual fines and fees.

Palma filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Palma on appeal. Appointed counsel filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for arguable issues. We then notified Palma by letter that he could submit any claim, argument or issues that he wished our court to review. Palma has not filed any claims or arguments.

DISPOSITION

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled his duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.