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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.

JEREMY SMITH,

Defendant and Appellant.

B281669

(Los Angeles County
Super. Ct. No. BA442918)

THE COURT:*

Defendant and appellant Jeremy Smith (defendant) appeals his conviction of assault with a deadly weapon. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On August 28, 2017, we notified defendant of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he might wish to have considered. That time has elapsed, and defendant has submitted no brief or letter. We have reviewed the entire record, and finding no arguable issues, affirm the judgment.

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

Defendant was originally charged with two counts: the attempted murder of M.R., in violation of Penal Code sections 664 and 187, subdivision (a);¹ and assault with a deadly weapon (a knife) against the same victim. The amended information also alleged that defendant personally inflicted great bodily injury on the victim within the meaning of section 12022.7, subdivision (a). It was further alleged pursuant to the “Three Strikes” law (§§ 667 subds. (b)-(j) & 1170.12), that defendant had suffered a prior serious or violent felony conviction in 2009. The same conviction, a violation of section 245, subdivision (a)(1), was alleged for purposes of the five-year enhancement under section 667, subdivision (a)(1), and as a prison prior for purposes of the one-year enhancement under section 667.5, subdivision (b).

After a jury acquitted defendant of attempted murder, but was unable to reach a verdict on the assault with a deadly weapon count, the trial court declared a mistrial, and the prosecution proceeded on count 2 in a second trial. After the second trial, the jury convicted defendant of assault with a deadly weapon, and found true the allegation that defendant had inflicted great bodily injury on the victim. Defendant waived a jury trial on the prior conviction and in a bifurcated proceeding, the trial court found true the prior conviction allegation. On March 21, 2017, the trial court sentenced defendant to a total prison term of 16 years, comprised of the upper term of four years, doubled due to the prior strike, plus three years for the great bodily injury enhancement, and five years for the serious felony prior. The court imposed mandatory fines and fees, and awarded presentence custody credit of 501 days, comprised of 436 actual days and 65 days of conduct credit. Defendant filed a timely notice of appeal from the judgment.

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

The prosecution evidence showed that M.R., her friend Kayla W.,² and others were visiting defendant at his home, drinking cognac and smoking marijuana and methamphetamine. Defendant texted M.R. asking for sex, and became agitated when she declined. After the other visitors left, as M.R. and Kayla W. were preparing to leave, defendant stopped them and said he thought M.R. and Kayla W. intended to rob him and had people waiting outside to beat him up. He followed M.R. as she walked away, punched her in the mouth, pulled out a knife, and then stabbed her in the shoulder. After M.R. fell defendant got on top of her and stabbed her again, eight or nine times in all. Defendant fled, entered a neighbor's home asking the neighbor to call the police because someone was trying to kill him and his family. He was later found on a rooftop two blocks from the scene of the stabbing.

M.R. suffered a punctured lung, damage to nerves and arteries which required surgery. Her stab wounds were closed with 60 staples.

We have examined the entire record and are satisfied that defendant's appellate counsel has fully complied with her responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

² Both M.R. and Kayla W. testified, and their versions of the events differed in immaterial respects. The two women, both 20-year old prostitutes at the time of the crime, had known each other for years, and defendant had been Kayla W.'s on-again-off-again boyfriend. M.R. admitted she had five misdemeanor prostitution convictions in two years.

The judgment is affirmed.

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