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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO LUCIANO ARENCIBIA,

Defendant and Appellant.

B281574

(Los Angeles County  
Super. Ct. No. BA450651)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol H. Rehm, Jr., Judge. Affirmed.

Stanley Dale Radtke, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Sergio Luciano Arencibia appeals from the February 28, 2017 judgment of conviction of misdemeanor battery on a peace officer. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

### **PROCEDURAL AND FACTUAL HISTORY**

The information filed on November 22, 2016 alleged that, on May 25, 2016, defendant committed a battery with injury on a peace officer. (Pen. Code, § 243, subd. (c)(2).)<sup>1</sup>

It was further alleged that defendant had been convicted in 2009 of one count of robbery (§ 211), a previous serious or violent felony, and convicted in 2012 of one count of felony vandalism, for which he was in custody and did not remain free from custody for five years. (§§ 667, subds. (b)-(j); 667.5, subds. (b), (c ); 1170, subd. (h)(3); 1170.12; 1192.7.)

A deputy public defender represented defendant. Defendant entered a plea of not guilty and denied all allegations.

Viewed in accordance with the usual rules of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following:

On May 25, 2016, a deputy sheriff attempted to execute a court order to extract defendant from his Twin Towers jail cell to bring him to a court appearance. Defendant refused, but agreed to exit his cell at 2:00 p.m. The deputy, accompanied by other deputies, returned at 2:00 p.m., but defendant again refused to leave his cell. Deputies spoke with him for about 40 minutes to get him to cooperate, but he continued to refuse.

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<sup>1</sup> Further statutory references are to the Penal Code.

Finally, defendant agreed to leave his cell. He placed his hands through the cell door's tray slot and Deputy Keith Dwyer restrained defendant's hands with handcuffs. Deputy Dwyer asked defendant to turn to his left to enable the deputy to secure the waist chain around defendant's waist. Defendant stepped back and refused to turn. The deputy opened the cell door, drew the chain through the tray slot, and again asked defendant to turn to his left. Defendant started to comply, but when he hesitated, the deputy pushed defendant's shoulder. Defendant punched Deputy Dwyer's left cheek with both fists and, when the deputy stepped back, defendant continued to "rush" the deputy. Another deputy finally subdued defendant by using a Taser and then hobbling defendant.

Deputy Dwyer suffered a small laceration, bruising inside his lip, and swelling on his left cheek. He was medically released from work for three days.

Among other instructions given, the court instructed the jury as to battery on a peace officer with injury and the lesser included offense of battery on a peace officer without injury.

The jury returned a verdict of guilty on the lesser included offense of misdemeanor battery on a peace officer without injury. (§ 243,subd. (b).)

On February 28, 2017, the court imposed sentence on defendant. Detailing defendant's juvenile and criminal history, the court declined to impose a concurrent sentence and imposed a jail term of 364 days to be served consecutively to any other sentences, including sentences in Case No. BA436377 and Case No. BA439503. The court did not award custody credit, because defendant was already in custody on another case.

The court imposed a \$30 criminal conviction assessment, a \$40 court operations assessment, and a \$150 restitution fine.

Defendant timely appealed.

### **DISCUSSION**

After review of the record, defendant's court-appointed appellate counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d 436. Via letter sent on August 23, 2017, we advised defendant that he had 30 days within which to submit any contentions or issues that he wished us to consider. Defendant has not filed a supplemental brief.

We have examined the entire record and are satisfied that no arguable issues exist, and 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, 112-113.)

***DISPOSITION***

The judgment is affirmed.

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STONE, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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