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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ANTONIO

ESQUIVEL,

Defendant and Appellant.

2d Crim. No. B287805
(Super. Ct. No. 2017004438)
(Ventura County)

Appellant Jorge Antonio Esquivel was charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),¹ battery (§ 242), and conspiracy to participate in a criminal street gang (§ 182.5.) The complaint alleged the offenses were committed in association with, or to benefit, a criminal street gang. (§ 186.22, subds. (b)(1)(B), (d).)

¹ All statutory references are to the Penal Code.

Appellant waived his preliminary hearing and trial rights, pled guilty to the assault and battery charges and admitted the gang allegations.

Pursuant to the parties' plea agreement, the trial court sentenced appellant to a total of seven years in state prison, consisting of the lower term of two years for the assault charge (§ 245, subd. (a)(1)) enhanced by five years for the gang allegation (§ 186.22, subd. (b)(1)(B)). Appellant was sentenced to a concurrent term of one year on the battery charge (§§ 242, 186.22, subd. (d)). The court awarded appellant 581 days of presentence credits, imposed various fines and fees, and ordered appellant to pay restitution to the two victims.

Appellant filed a timely notice of appeal. The appeal lies from any error that would not contest the plea. (§ 1237; Cal. Rules of Ct., rule 8.304(b).)

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. The 30 days have since passed, and appellant has not presented any contentions or issues for our consideration.

On January 17, 2017, appellant, a documented Fillmore LBZ street gang member, and two other gang members assaulted Isaac T., a rival gang member, and battered him with a metal pipe. Appellant was the primary aggressor during the assault. Isaac T.'s finger was fractured and he suffered a head

wound which required eight staples. Isaac T. also suffered multiple abrasions to his head and arms.²

After Isaac T.'s assault, appellant and two others assaulted Jose C. for refusing to participate in the fight with Isaac T. Appellant and another gang member had wanted Jose C. to assault Isaac T. to show his allegiance to the Fillmore LBZ street gang.

We have reviewed the entire record and are satisfied that appellant's counsel has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

² Because there was no preliminary hearing or trial, the facts are taken from the Probation Officer's Report filed on November 27, 2017.

Bruce A. Young, Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.