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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GERBER AVILES,

Defendant and Appellant.

B282351

(Los Angeles County
Super. Ct. No. BA442342)

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

Katja Grosch, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Gerber Aviles was sentenced to six months in county jail following his conviction of simple assault, a lesser included offense of assault with intent to commit rape, sodomy or oral copulation. Aviles's court-appointed appellate counsel notified this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that she was unable to find any arguable issues to assert on appeal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 17, 2015 Dora R. finished her lunch at a restaurant and decided to use the women's restroom, where she encountered Aviles sitting inside one of the stalls. He was naked and holding his penis. When Aviles saw Dora, he grabbed her arms and pulled her toward him while breathing heavily and staring at her intensely. After a brief struggle, Dora fled from the restroom, and the police were called.

When the police arrived, Aviles acknowledged to the officers that he was attracted to Dora and had grabbed her arms. Aviles explained he had not intended to harm Dora and would never have raped her, although he had wanted to have sex with her. Aviles said he was in the women's restroom because of a misunderstanding. Aviles made several confusing comments and told the officers he had schizophrenia.

On January 19, 2016, the People filed an information charging Aviles with assault with intent to commit rape, sodomy or oral copulation (Pen. Code, § 220, subd. (a)(1)). Aviles pleaded not guilty.

Prior to trial on March 2, 2016, Aviles' counsel declared a doubt as to Aviles's competence. The trial court ordered the proceedings suspended and scheduled a competency hearing and

appointed mental health experts to evaluate Aviles's competence under Penal Code section 1368.

Following a competency hearing on April 20, 2016, the trial court found Aviles not mentally competent to stand trial and ordered him to a state mental hospital.

On January 5, 2017, Aviles was returned from the state mental hospital with a certification that he was competent to stand trial.

The case was tried to a jury in April, 2017. Over defense objection, the trial court permitted the prosecution to introduce prior occasions of inappropriate touching of two women by Aviles. In each instance, Aviles had admitted his conduct to responding officers.

Sunji Miles, Aviles's mental health case manager, testified in his defense. Miles testified Aviles was unable to live independently; he needed a caregiver.

On April 26, 2017, the jury found Aviles not guilty of assault with intent to commit rape, sodomy or oral copulation, but guilty of the lesser included offense of simple assault. Aviles filed a timely notice of appeal from the judgment.

DISCUSSION

We appointed counsel to represent Aviles on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On November 2, 2017, we advised Aviles that he had 30 days to submit a brief or letter raising any grounds for appeal, contentions, or arguments he wanted us to consider. We have received no response.

We have examined the record and are satisfied that appellate counsel for Aviles has complied with his responsibilities

and there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

DISPOSITION

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

BENSINGER, J.*

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