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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,	B281807
Plaintiff and Respondent,	(Los Angeles County
v.	Super. Ct. No. MA068608)
JOVANI GUILLEN,	
Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Frank M. Tavelman, Judge. Affirmed.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Jovani Guillen appeals from his conviction, following entry of a plea of no contest, to one count of assault with a semiautomatic firearm. As part of the plea agreement, defendant also admitted having suffered a prior strike within the meaning of the “Three Strikes” law and admitted a gun use allegation. The court imposed an aggregate state prison term of 20 years. We affirm.

On January 14, 2016, defendant was charged by information with one felony count of assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b); count 1), one felony count of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1); count 2), one misdemeanor count of possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a); count 3), and one felony count of possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 4). It was further alleged that defendant had suffered a prior conviction for a serious felony within the meaning of Penal Code section 667, subdivision (a) and subdivisions (b) through (i). It was also alleged as to count 1 that defendant personally used a firearm in the commission of the offense (Pen. Code, § 12022.5, subds. (a) & (d)).

The charges arose from the following facts as reflected in the preliminary hearing testimony.

On the afternoon of May 3, 2016, Olga G.¹ pulled into the parking lot of a market on East Palmdale Boulevard in the City of Palmdale. She saw an open parking space but noticed there was a car parked in the space to the left with the front passenger

¹ In order to protect the privacy of the victim, we use only the first initial of her last name.

door open, blocking her ability to pull in and park. A man, later identified as defendant, was seated in the passenger seat. Ms. G. waited a few moments to see if defendant would close his door so she could park. When defendant failed to do so, Ms. G. tapped her horn once.

In response, defendant immediately got out of his seat, walked several steps in the direction of Ms. G.'s car and pointed a handgun directly at her face. Defendant said something to Ms. G. in English but she did not understand him. Ms. G. was shocked and scared by defendant's behavior. After a few moments, defendant got back into his car and closed the door.

Ms. G. parked and quickly went into the market and called the police. Deputy Sheriff Efrain Godoy arrived on the scene and spoke to Ms. G. She explained what happened. Deputy Godoy then showed her a semiautomatic handgun (his duty weapon) and a revolver (his backup weapon). He asked what defendant's gun had looked like and she pointed at the semiautomatic handgun. Ms. G. said defendant's gun was smaller however.

Deputy Godoy saw defendant still seated in his car in the parking lot. Deputy Godoy spoke to defendant and eventually detained him, along with another deputy who arrived on the scene. A loaded handgun was found in the front passenger door compartment of defendant's car, and ammunition and heroin were found in defendant's possession. Defendant admitted that the handgun found in the car belonged to him.

Just before the start of the preliminary hearing in May 2016, defendant requested a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). After conducting a hearing outside the presence of the prosecutor, the court denied defendant's request.

The court proceeded with the preliminary hearing and held defendant to answer on all four of the charges. Several months later, defendant made a second *Marsden* motion, which was again denied by the court.

Thereafter, defendant entered into a plea agreement with the prosecution. Defendant waived his constitutional rights on the record. In accordance with the terms of the plea agreement, defendant withdrew his not guilty plea and pled no contest to count 1, and admitted his strike prior and the gun use allegation pursuant to Penal Code section 12022.5 in exchange for a sentence of 20 years. The court found defendant's waivers to be knowingly and voluntarily made, and counsel stipulated to a factual basis for the plea based on the preliminary hearing testimony.

At the sentencing hearing, the court imposed, in accordance with the plea agreement, a 20-year aggregate sentence calculated as follows: a six-year midterm on count 1, doubled due to the strike prior, plus a consecutive five-year term pursuant to Penal Code section 667, subdivision (a)(1), and a consecutive three-year term for the gun use enhancement pursuant to section 12022.5, subdivisions (a) and (d). Defendant was awarded 340 days of presentence custody credits (296 actual days and 44 good time/work time). The court also imposed various fines and fees, including a \$6,000 restitution fine. Counts 2, 3 and 4 were dismissed in accordance with the terms of the plea agreement.

Defendant obtained a certificate of probable cause and filed this appeal.

We appointed appellate counsel to represent defendant. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief

included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record, along with copies of the record. Counsel further declared she advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days.

Defendant did not file a supplemental brief.

We have examined the entire record, including the sealed transcripts related to defendant's two *Marsden* motions, and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436, 441.)

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.