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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.

CLIFTON OCTAVEUS MILLER,

Defendant and Appellant.

B280985

(Los Angeles County  
Super. Ct. No. MA065161)

THE COURT:\*

Clifton Octaveus Miller (defendant) appeals from the trial court's order revoking his probation and imposing the previously imposed sentence. We appointed counsel to represent him on this appeal.

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

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist. On October 30, 2017, we sent defendant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. We have received no response. There is substantial evidence to support the trial court's finding that defendant violated his probation. We affirm the trial court's order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In January 2015, defendant got into an argument with his mother during which he pushed her into a wall; told her he was going to beat and kill her; and prevented her from leaving the house by standing between her and the front door. She escaped from the house through the garage door.

In the operative, first amended information, the People charged defendant with (1) false imprisonment (Pen. Code, § 236),<sup>1</sup> and (2) criminal threats (§ 422, subd. (a)). The People also alleged that defendant's 2008 burglary conviction (§ 459) constituted a "strike" under our Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d), a prior "serious" felony (§ 667, subd. (a)(1)), and a prior prison term (§ 667.5, subd. (b)). The People also alleged an additional prior prison term.

Prior to trial, defense counsel declared a doubt as to defendant's competence to stand trial, and three doctors were appointed to examine defendant pursuant to Evidence Code section 730. After considering the three psychological

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

assessments, two of which found the defendant competent and simply malingering, the trial court found defendant mentally competent to stand trial.

On October 20, 2015, pursuant to a negotiated plea agreement, defendant entered a plea of no contest to one count of criminal threats in exchange for the dismissal of the remaining allegation, a suspended three-year state prison sentence, and a grant of formal probation for five years, with an order to enroll in and complete 60 days of Cal Trans service. Defendant was advised of and waived his constitutional rights, and was advised of and acknowledged that he understood the consequences of his plea. Counsel stipulated to a factual basis for the plea. The trial court found defendant had knowingly, voluntarily, and intelligently waived his constitutional rights, and the court entered his guilty plea. In accordance with the plea agreement, the court sentenced defendant to three years in state prison, suspended the sentence, and placed defendant on probation for five years.

In October 2016, defendant used his closed fist to punch his girlfriend in the eye and attempted to punch her several more times before she locked herself in the bathroom and called the police. The People filed a motion requesting revocation of probation. Probation was revoked, and a probation violation hearing was scheduled for November 2016.

In November 2016, defense counsel declared a doubt regarding defendant's mental competency, and the court appointed a doctor to evaluate and report on defendant's mental competency.

On January 11, 2017, the trial court found defendant competent.

On January 18, 2017, following a contested probation revocation hearing, the trial court found defendant in violation of his probation for failing to complete his community labor as ordered and for violating the court's order of no further violence based on his October 2016 conduct against his girlfriend. The trial court sentenced defendant to the upper term of three years in state prison on the original conviction for criminal threats.

Defendant filed a timely notice of appeal.

### **DISCUSSION**

Under the applicable standard of review (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681), there is substantial evidence supporting the trial court's decision to revoke probation. We are satisfied appellate counsel for defendant has fully complied with his responsibilities, and there are no arguable issues. (See *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *Wende, supra*, 25 Cal.3d at pp. 441-442.)

The judgment is affirmed.

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