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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE EARL HASKIN,

Defendant and Appellant.

B275425

(Los Angeles County
Super. Ct. No. BA391618)

APPEAL from orders of the Superior Court of Los Angeles County. Douglas Sortino, Judge. Dismissed.

D. Inder Comar, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

This is the second appeal by defendant and appellant Eddie Earl Haskin arising from his conviction by jury of one count of corporal injury to a spouse, one count of disobeying a domestic violence protective order, one count of making a criminal threat, and one count of stalking. The charges arose from incidents that took place on August 22 and November 21, 2011, between defendant and his wife, Felecia Balam, from whom he was separated.

Defendant's first appeal was filed after his conviction (case No. B264690). We issued our opinion in that appeal on April 21, 2016. We excerpt the pertinent portion of the factual summary from that opinion as follows:

"On August 22, 2011, Ms. Balam made numerous calls to 911 reporting that defendant was harassing her outside of a liquor store (as well as later that same day at her mother's home), he was making threats, and he was violating a restraining order by coming near her. Ms. Balam and defendant were married in 2008, but in August 2011, Ms. Balam was separated from defendant and no longer living with him. When he first approached her that day, he shook his fist at her and told her he 'should f--- [her] up.' He then walked away. Defendant then approached her again, still angry, grabbed her hard by both arms and yanked her hair. Defendant struck her on the left side of her head, and then ran off again, laughing. Ms. Balam returned to her mother's home nearby. The police eventually arrived, took a report from Ms. Balam and took photographs of an injury to her arm.

"On November 21, 2011, one of the police officers investigating the August 22 incident was speaking with Ms. Balam at her mother's home. She told the officer that

defendant had been served again, by her father, with a copy of a restraining order, and defendant had crumpled it up and thrown it on the ground. Defendant had also come over to the house earlier that day, uninvited. While the officer was speaking with Ms. Balam, she received a phone call from defendant. Defendant was speaking loud enough that the officer could hear what defendant was saying over the phone. Defendant said he did not care about any restraining orders and that he was going to come over to the house and 'f--- [her] up.'

"Defendant was charged by information with four counts: corporal injury to a spouse (Pen. Code, § 273.5, subd. (a)); disobedience of a domestic violence protective order (§ 273.6, subd. (a)), making a criminal threat (§ 422, subd. (a)), and stalking (§ 646.9, subd. (b)). It was also alleged defendant had a prior qualifying strike (1991 robbery) within the meaning of the Three Strikes law (§ 1170.12, subds. (a)-(d), § 667, subds. (a)(1) & (b)-(i)), as well as a prior misdemeanor conviction for corporal injury to a spouse/cohabitant from 2011 within the meaning of section 273.5, subdivision (f). Defendant pled not guilty and denied the special allegations.

"The case proceeded to trial by jury in March 2015. Ms. Balam testified to the above incidents and a recording of her 911 calls was played for the jury. The jury was also shown photographs, including one of an abrasion on Ms. Balam's arm which she identified as an injury she received during the altercation with defendant on August 22, 2011. Officer Michael Zorkin of the Los Angeles Police Department testified to his investigation of the August 22, 2011 incident. Officer Steven Franssen, who overheard the telephone conversation between defendant and Ms. Balam on November 21, also testified.

“The jury was advised that defendant pled no contest in February 2011 to a misdemeanor violation of Penal Code section 273.5 involving Ms. Balam, that he was placed on three years formal probation, and was served with a protective order ordering him to not harass or annoy Ms. Balam, or come within 100 yards of her or her home.

“The jury found defendant guilty as charged. In a bifurcated proceeding, the court found the prior allegations true.

“At the sentencing hearing, the court heard lengthy argument on defendant’s motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). The court denied the motion, reasoning that while defendant’s prior strike for robbery from 1991 was old, defendant had a ‘consistent and constant record of criminal convictions both felony and misdemeanor from 1990 through 2010’ (including knowingly violating a domestic violence protective order), and therefore could not be characterized as someone with a background, record and character outside the spirit of the ‘Three Strikes’ law.

“The court sentenced defendant to a state prison term of 14 years 4 months, calculated as follows: the court selected count 1 (violation of Pen. Code, § 273.5, subd. (a) on Aug. 22, 2011) as the base term and imposed a midterm of four years, doubled due to the prior strike; a consecutive term on count 3 (criminal threat of Nov. 21, 2011) of eight months (one-third the midterm) doubled due to the prior strike; a concurrent term of 365 days on count 2 (violation of protective order); and, a five-year enhancement for the prior strike pursuant to section 667, subdivision (a)(1). On count 4, the court imposed and stayed, pursuant to section 654, a four-year midterm. The court imposed various fines and fees, and awarded defendant total custody credits of 317 days.”

Defendant's counsel in the first appeal filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. Defendant filed a supplemental letter brief enumerating his contentions of alleged trial court error. We affirmed defendant's conviction, concluding that defendant's claims of error lacked merit because defendant failed to affirmatively show trial court error, or they were issues related to the alleged effectiveness of trial counsel which could not be resolved on the appellate record presented.

Following the issuance of our decision in the first appeal, defendant filed a petition for habeas corpus and a motion to recall his sentence in the trial court. On April 4, 2016, the trial court denied defendant's petition and motion. The court found that defendant's petition raised three issues "(1) the court improperly granted the complaining witness immunity; (2) the court denied defendant's right to a *Romero* hearing; and (3) defendant's trial counsel was incompetent." The court found as to the first and second grounds that those issues had already been raised and rejected by this court in the first appeal, or were issues that could have been raised and were not. The court also found that as to all three issues, defendant failed to allege sufficient supporting facts. The court found defendant's motion for recall of sentence to be untimely and unsupported by any facts that would justify the requested relief.

Defendant filed a notice of appeal from the April 4, 2016 orders. We appointed appellate counsel to represent defendant. Appellate counsel filed a *Wende* brief in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his evaluation of the record. Counsel further declared he advised

defendant of his right, under *Wende*, to submit a supplemental brief within 30 days, and forwarded copies of the record to defendant.

Defendant filed a handwritten letter brief on November 21, 2016, in which he makes the following claims: (1) ineffective assistance of trial counsel for presenting an “inadequate defense,” “fail[ing] to object,” and “fail[ing] to discredit the witness”; and (2) ineffective assistance of appellate counsel for filing a *Wende* brief instead of raising specific instances of error.

Defendant also filed a second letter brief, which we allowed to be filed, on December 12, 2016. Defendant claims additional error that his 1991 prior strike “do[es] not exist” as of November 8, 2016, “1385 Judge discretion [*sic*] to strike a strike,” “enhancement of 5 yrs for strike prior and prison prior do [*sic*] to prop. 57 enhancement is no longer used,” domestic violence under Penal Code section 273.5 is a “non-violent crime,” the court granted immunity to Ms. Balam allowing her to commit “perjury,” and phone records were not subpoenaed to verify whether defendant threatened Ms. Balam by phone.

Defendant’s appeal from the trial court’s order denying his petition for writ of habeas corpus must be dismissed. The denial order is not an appealable order. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 983 [a defendant has no right to appeal the trial court’s denial of a petition for habeas corpus “and must instead file a new habeas corpus petition in the reviewing court”]; accord, *In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

Defendant’s appeal from the trial court’s order denying his motion for a recall of sentence under Penal Code section 1170, subdivision (d) must also be dismissed. Defendant’s motion was filed well past the 120 days provided for in the statute within

which the trial court can entertain such a motion. The trial court therefore lacked jurisdiction to rule on defendant's motion and its denial did not affect defendant's substantial rights within the meaning of section 1237, subdivision (b). Accordingly, the denial was not an appealable order. (*People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725-1726; accord, *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208.)

DISPOSITION

The appeal is dismissed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.