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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.

LUIS MENDEZ,

Defendant and Appellant.

B277515

(Los Angeles County
Super. Ct. No. MA067032)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Pursuant to a plea bargain, Luis Mendez entered a no contest plea to assault with a firearm (Pen. Code, § 245, subd. (a)(2); count 4)¹ and admitted the gang allegation (§ 186.22, subd. (b)(1)(B)) and the allegations that he had suffered a strike under the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and he had served two prior prison terms (§ 667.5, subd. (b)).

After entry of his plea, defendant submitted an unsigned letter seeking withdrawal of his plea. The trial court noted the letter was not made under penalty of perjury and was “not in the form of a motion.” Defendant argued his plea had been induced by the prosecutor’s threat to add a new charge under section 246, plus a gang allegation, increasing his possible sentence by 15 years to life. The court explained this was simply an advisement of his potential punishment exposure and noted his codefendant had been acquitted in the interim. The court denied defendant’s request for lack of good cause.

Defendant was sentenced to a total term of 15 years, which accorded with the plea agreement, consisting of eight years, or double the four-year upper term for his strike, plus the five-year gang enhancement and two years, or one year for each prior prison term enhancement. After noting he had waived 180 custody days credit as part of the plea bargain, the court awarded him a total of 300 days precommitment credit, consisting of 150 custody days and 150 conduct days.

Defendant filed a notice of appeal from the order denying his motion to withdraw his plea without a certificate of probable cause.

¹ All further section references are to the Penal Code.

We appointed appellate counsel to represent defendant. Appointed 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 he reviewed the record and sent a letter to defendant explaining his evaluation of the record. Counsel further declared that he advised defendant of his right, under *Wende*, to submit a supplemental brief. Defendant did not file any supplemental brief with this court.

BACKGROUND

The following facts are based on the preliminary hearing transcript and the probation report pursuant to defendant's plea stipulation. (*People v. Holmes* (2004) 32 Cal.4th 432, 436.) The underlying assault with a firearm charge arose from an earlier gang tagging confrontation.

On September 14, 2015, about 2:00 or 3:00 p.m., Karina R. noticed her brother Rafael Ramirez, a gang member, walking on 29th Street towards the family home in Palmdale. He had a big lump on either side of his head and his nose was bent to the side, which injuries he did not have that morning. They discussed how he got his injuries. He described the perpetrators and told her about a Blue Honda associated with them.

About midnight, Karina R. noticed a Blue Honda near a block wall and could see from her house two males spray-painting graffiti indicating the Blythe gang over existing gang graffiti. Accompanied by Ruth C., her sister-in-law, Karina R. asked why they were writing on the walls. The taggers threatened to kill her if she said anything. One displayed a gun. She called 911.

About 1:00 or 2:00 a.m., Karina R., who was holding her 15-month-old son, was standing outside the family residence with Rafael and Carlos R. when she noticed a silver car stopped across

the street and the Blue Honda behind it. The male occupants of the Honda were the driver and a front passenger. She saw the male driver of the silver car point a gun in his hand in her direction. She heard one or two shots.

From a photographic lineup, Karina R. identified defendant as one of the two taggers. When arrested, defendant was driving a tan or gold Nissan Altima. In an interview, he admitted he was a Blythe Street gang member and his moniker was “Triste.” In his interview, the codefendant admitted he also was a Blythe Street gang member. During an interview, Diego Ahumada, one of the Blue Honda occupants during the shooting incident, told a detective the shooter was a Blythe Street gang member whom he knew as “T” or “Triste” and the driver of the “tanish” “Nissan, Toyota or Honda[.]”

We have examined the entire record, consisting of two volumes of a clerk’s transcript and one volume of a reporter’s transcript. We are satisfied appointed counsel fully complied with his responsibilities and that no arguable appellate issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.