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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.

KIM HUBBARD,

Defendant and Appellant.

B277269

(Los Angeles County  
Super. Ct. No. BA439039)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. Lafortheza, Judge. Affirmed.

Carlo Andreani, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In accord with a negotiated plea agreement, Kim Hubbard pled guilty to assault with a deadly weapon, a broken glass bottle, and admitted that she personally inflicted great bodily injury in the commission of the offense. (Pen. Code, §§ 245, subd. (a)(1); 12022.7, subd. (a).)<sup>1</sup> Further, Hubbard admitted that she had suffered two prior strikes. (§§ 667, subds. (b)-(j); 1170.12.) As agreed by the parties, the trial court sentenced Hubbard to a total term of seven years in state prison comprised of the low term of two years for the aggravated assault, doubled to four years for one prior strike, plus three years for the great bodily injury enhancement. The court dismissed the second strike pursuant to section 1385. Hubbard’s appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

### **FACTS<sup>2</sup>**

Hubbard approached Demetria Lawson in a market and “made a little comment” to the effect, “Don’t look at me, B, because I’m going to F you up.” Hubbard then punched Lawson, and the two started “fighting,” with Lawson “protecting” herself. The scuffling broke up when somebody said that he was going to call the police and told the two to get out of the store. As Hubbard and Lawson were walking away from the store, Hubbard stopped and started “fighting” with Lawson again. This time, Hubbard came at Lawson with a broken glass bottle. Hubbard hit Lawson three or four times with the broken bottle,

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<sup>1</sup> All further undesignated section references are to the Penal Code.

<sup>2</sup> Because Hubbard pled guilty, we recount the facts from the transcript of her preliminary hearing.

cutting and bloodying Lawson. After the attack, Lawson received several stitches on her chest and wrist.

The People filed an information charging Hubbard with assault with a deadly weapon, a broken glass bottle, with an allegation that she personally inflicted great bodily injury during the commission of the offense. (Count 1; §§ 245, subd. (a)(1); 12022.7, subd. (a).) Further, the People alleged that Hubbard had been convicted of making criminal threats (§ 422) in 2007 in case number BA326066 and assault with a deadly weapon (§ 245, subd. (a)(1)) in 2009 in case number BA359829, and that those convictions qualified as prior strikes, prior serious felony convictions, and prior felony convictions with a prison term. (§§ 667, subs. (a), (b)-(j); 667.5, subd. (b); 1170.12.)

The trial court denied Hubbard's *Marsden* motion<sup>3</sup> to replace Deputy Public Defender Eric Stanford as her counsel. Thereafter, the court granted Hubbard's request for substitution of attorney, and private counsel, Frank Rafferty, became Hubbard's counsel of record. Several month later, Hubbard told the court that she wished to relieve attorney Rafferty as her counsel of record. The court agreed, and the Public Defender's Office was again appointed. By the time of trial setting hearings, Deputy Public Defender Alissa Sterling had been appointed as Hubbard's attorney of record.

Shortly after arriving at the trial courtroom with a jury panel waiting in the hallway, the parties advised the trial court that a negotiated disposition had been reached. In accord with the plea agreement, Hubbard expressly waived her constitutional trial rights, and pleaded no contest to the aggravated assault

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<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

charge and great bodily injury allegation. Further, Hubbard admitted her 2007 conviction for making criminal threats and her 2009 conviction for assault with a deadly weapon. In accord with the plea agreement, the court sentenced Hubbard to a total term of seven years in state prison, as noted above, comprised of the low term of two years for the aggravated assault, doubled to four years for one prior strike (the 2009 aggravated assault conviction), plus three years for the great bodily injury enhancement. The court expressly dismissed the second strike allegation (the 2007 criminal threats conviction) pursuant to section 1385.<sup>4</sup>

Hubbard filed a timely notice of appeal. The trial court granted her request for a certificate of probable cause.

### **DISCUSSION**

We appointed counsel to represent Hubbard on appeal. Appointed counsel filed an opening brief on appeal pursuant to *Wende, supra*, 25 Cal.3d 436, asking our court to review the record independently for any arguable issues. We notified Hubbard by letter that she could submit any arguments or issues that he wished our court to review. Hubbard has not responded to our letter.

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<sup>4</sup> The record is silent as to the disposition of the other prior conviction allegations in the information. We consider those allegations implicitly dismissed in light of the seven year term imposed under the plea agreement.

### **DISPOSITION**

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled his duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.) The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.