

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

FORYCE BUSSEY, JR.

Defendant and Appellant.

B280170

(Los Angeles County
Super. Ct. No. GA099296)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry Smerling, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Foryce Bussey, Jr., pled guilty to assault with a deadly weapon, a knife, and admitted both a great bodily injury (GBI) enhancement, and a prior strike. (Pen. Code, §§ 245, subd. (a)(1); 12022.7, subd. (a); 667, subds. (b)-(j); 1170.12, subds. (a)-(d).)¹ In accord with a negotiated plea agreement, the trial court sentenced Bussey to a term of nine years in prison as follows: the mid-term of three years for the aggravated assault offense, doubled to six years for the prior strike, plus three years for the GBI enhancement. The court awarded Bussey a total of 148 days of custody credits for 129 days of actual local time in custody, plus 19 days of local conduct credits. Further, the court ordered Bussey to pay a series of regular restitution fines, fees and assessments. Bussey's appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

FACTS²

The Assault

On July 17, 2016, Elby Ellsworth was inside his apartment with the door open when Bussey, a neighbor, walked in and assaulted him without provocation. Bussey pushed Ellsworth against a wall and punched him in the face three to four times and then picked up a kitchen knife and swung it at him multiple times. Bussey stopped the attack as suddenly as he had started it, and then left Ellsworth's apartment.

¹ All further undesignated section references are to the Penal Code.

² Because Bussey pled guilty to the felony complaint, our summary of the facts is from the probation officer's report.

Ellsworth contacted the apartment complex's security guard, and the guard contacted police. Police officers responded to a radio call of an assault with a deadly weapon. Upon arriving at the scene, the officers learned that Bussey had stabbed Ellsworth on his arm, and that paramedics had taken Ellsworth to a local hospital.

The officers interviewed Ellsworth at the hospital, and he reported the facts summarized above. The officers observed that Ellsworth had multiple abrasions to his face, eyes and nose, along with a two inch laceration on his left arm.

After the officers interviewed Ellsworth at the hospital, they went to Bussey's residence and arrested him.

The Criminal Case

In July 2016, the People filed a felony complaint charging Bussey with assault with a deadly weapon, a knife, on Ellsworth. (Count 1; § 245, subd. (a)(1).) Further, the complaint alleged that Bussey personally inflicted GBI in the commission of the assault. (§ 12022.7, subd.(a).) The complaint further alleged that Bussey suffered two prior convictions for first degree burglary (§ 459) in separate cases in 1986, and that the convictions qualified both as prior serious felony convictions and as strikes. (§§ 667, subd. (a)(1); 667, subd. (d); 1170.12, subd. (b).)

On November 22, 2016, the trial court called the case for a preliminary hearing. At that time, the prosecution offered a nine year prison sentence in exchange for Bussey's no contest plea, and Bussey accepted the offer. Bussey then waived his constitutional trial rights, acknowledged the consequences of his plea, and pled guilty to the aggravated assault charged in count 1, with a GBI enhancement, and admitted one of the two alleged prior strike convictions. The court found that Bussey had

“knowingly and intelligently” entered his plea. In accord with the plea agreement, the court sentenced Bussey to nine years in prison as stated at the outset of his opinion. The court ordered Bussey to pay a \$300 restitution fine pursuant to section 1202.4, subdivision (b), a parole restitution fine pursuant to section 1202.45 in the same amount, stayed pending successful completion of parole, a \$40 court operations assessment under section 1465.8, subdivision (a)(1), along with a \$30 criminal conviction assessment under Government Code section 70373. The court granted Bussey 129 actual credits and 19 local conduct credits for a total of 148 days of credit.

On December 12, 2016, Bussey filed a request for a certificate of probable cause based on an assertion that he had pled guilty “to a non-violent felony, making him eligible for resentencing under . . . Proposition 57.”³ On December 28, 2016, the trial court denied Bussey’s request for a certificate of probable cause for the following stated reasons:

“[A]n appeal would manifestly be meritless for two separate reasons. First, the defendant does not appear to be eligible for relief under Proposition 57 because he was convicted of a violent felony. See § 667.5(c)(8) (defining ‘violent’ felony as ‘any felony in

³ In advising Bussey of the consequences of his plea, the trial court told him: “Your plea of no contest will produce a felony conviction, a serious and violent felony conviction that could be used in the future to increase or enhance punishment if at a future date you’re again convicted of a felony. Again, sir, this is a strike. After today you’re going to have three strikes on your record. So understand, sir, in the future, if you’re convicted of a felony, it’s possible you could be facing 25 years to life in prison or more.”

which the defendant inflicts [GBI] on any person other than an accomplice which has been charged and proved as provided for in section [12022.7]’). [¶] Second, even if the defendant were eligible for relief under Proposition 57, he would not be entitled to be resentenced. Proposition 57 only provides an inmate who has completed his base term with a hearing before the Board of Parole Hearings. Cal. Const., art. I, sec 32(A).”

On January 5, 2017, Bussey filed a timely notice of appeal.

DISCUSSION

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

DISPOSITION

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled her 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:

FLIER, J.

GRIMES, J.