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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.

RICHARD GARCIA,

Defendant and Appellant.

B280453

(Los Angeles County
Super. Ct. No. BA449611)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert C. Vanderet, Judge. Affirmed as modified.

A. William Bartz, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Richard Garcia appeals following his plea of no contest to two counts of assault with caustic chemicals or

flammable substances. Defendant's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, stating that no arguable issue exists and requesting that this court independently review the record. Defendant, informed of his right to submit any contentions or argument he wished the court to consider, submitted a letter. We have reviewed the entire record and find no arguable issue. However, we have identified a clerical error in the abstract of judgment that must be corrected. So modified, we affirm the judgment.

FACTUAL BACKGROUND¹

Rosa Rodriguez and her daughter Cathrine Solis were homeless and living in their van. Rodriguez was on the sidewalk next to the van when defendant approached and began pouring gasoline from a red can onto the driver's side door. Defendant then walked over to the passenger side and began pouring the gasoline on that side as well. Some gasoline splashed on Solis, who was laying down inside. The two women began punching and pushing defendant, who poured more gasoline on them. Defendant then fled.

Solis reported that during the attack defendant had yelled, "You guys didn't help me at all the other day!" Two days earlier defendant had asked them to jump start his car but the car would not start.

PROCEDURE

Defendant was charged with two counts of assault with caustic chemicals or flammable substances under Penal Code

¹ The background facts are taken from the probation officer's report, which itself was based on the police report.

section 244.² It was alleged he had suffered prior felony convictions and was subject to an increased sentence under sections 667.5, subdivision (b) and 1170.12.

Defendant initially pleaded not guilty but later changed his plea to no contest and admitted to the prior convictions. The change of plea was against the advice of counsel. Immediately after defendant took his plea, defense counsel requested the test results for the substance defendant poured on Rodriguez and Solis, stating that if the results were exculpatory defense counsel “would be requesting to possibly withdraw the plea.” The court stated, “So when the results come back, we’ll deal with it.” At the sentencing hearing later that month defense counsel informed the court that “the People did provide me with a lab receipt after the last court date.” The record contains no other reference to the test results.

In accordance with the plea agreement, the court sentenced defendant to seven years for the first count (base term of three years doubled because of the prior strike, with one year added for the prior conviction), and two years for the second count (one-third the midterm of three years with one year added for the prior conviction). The court also awarded credits and imposed fines and fees.³

² Further statutory references are to the Penal Code.

³ The court’s oral pronouncement of judgment and the corresponding minute order differed from the terms of the plea agreement. This was corrected in a nunc pro tunc order filed a week later.

Defendant filed a notice of appeal. The trial court denied defendant's request for a certificate of probable cause.⁴

DISCUSSION

In his letter to this court, defendant requests the results of the laboratory tests of the substance and modification of his sentence should the results be "in [his] favor." However, the test results are "not part of the appellate record and hence cannot be reviewed on the record before us." (*People v. Kelly* (2006) 40 Cal.4th 106, 126.)

Defendant's appellate counsel filed a brief identifying no appealable issues. We have reviewed the entire record and find no arguable issue on appeal and are satisfied that defendant's attorney has fully complied with the responsibilities of counsel. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; see *People v. Kelly*, *supra*, 40 Cal.4th at p. 111; *People v. Wende*, *supra*, 25 Cal.3d at p. 441.)

We have identified a clerical error in the abstract of judgment. The court imposed a \$400 parole revocation restitution fine, then implicitly suspended it, stating that it "will only be imposed if parole is revoked." This fine, however, does not appear on the preprinted line on the abstract of judgment for restitution fines "suspended unless parole is revoked." Instead, the fine appears on the line for a restitution fine "now due, probation having been revoked." As there is no indication in the record that defendant was on probation or that said probation

⁴ The notice of appeal and request for a certificate of probable cause initially were rejected by the superior court clerk. This court granted defendant's application for relief from default, and directed the superior court to accept the notice and request as timely filed.

was revoked, we presume this is a clerical error and direct the trial court to correct it.

DISPOSITION

The trial court is directed to correct the clerical error described above and to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.