

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

YESENIA PINEDA,

Defendant and Appellant.

B281791

(Los Angeles County
Super. Ct. No. SA093722)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark T. Zuckman, Commissioner. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Yesenia Pineda appeals from the March 23, 2017 judgment of conviction by jury of two felony counts of fleeing a pursuing peace officer's motor vehicle while driving recklessly and a sentence of six years. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY

An October 20, 2016 information charged Pineda with two felony counts; count one of fleeing a pursuing peace officer's motor vehicle while driving recklessly (Veh. Code, § 2800.2) and count two of fleeing a pursuing peace officer's motor vehicle and driving against traffic (Veh. Code, § 2800.4). The information further alleged that Pineda had incurred six prior convictions for which she served prison terms and did not remain free of prison custody for five years between the terms.

The only issue before the jury was identification. Pineda and the prosecution entered into a stipulation that, on June 21, 2016, occupants of a white Dodge Ram pickup truck, license No. 09309A2, "willfully fled and eluded" Culver City Police Officers Scott Kakuk and Thomas Irwin "with the intent to evade said officers."

Officer Irwin testified that, while he was driving with his partner, Officer Kakuk, he saw Pineda, dressed in a ball cap and baggy clothing, at a gas station. She was with a bald-headed "Hispanic" man. When Officer Irwin drew closer in his marked vehicle, Pineda and the man walked "at a brisk pace" to the doors of the truck; Pineda stood at the open driver's side door, while the man stood at the passenger side door; both looked at the officers for about five to seven seconds. Pineda got into the driver's seat,

while the man climbed in the passenger side. Pineda made eye contact with Officer Irwin several times as she looked into both her sideview and rearview mirrors. Although Pineda was wearing a cap, the brim was upturned and the officer saw her face. It was a sunny day, and there was a clear line of visibility between Officer Irwin and Pineda.

Officer Irwin testified he was “100 percent” certain that Pineda was the driver of the truck.

Officer Kakuk testified that he had no doubt that Pineda was the woman he first observed at the gas station.

Pineda began driving away and made a right turn on a red light without first stopping, in violation of the Vehicle Code. Pineda then failed to stop at a stop sign, and Officer Irwin activated his vehicle’s forward-facing red light and siren. Pineda slowed the truck, but then accelerated to a speed of 70 to 80 miles per hour in school and residential areas and ran several additional stop signs. Pineda narrowly missed a collision with another police car that had its lights and siren on and then almost collided with a passenger vehicle and then a commercial delivery truck. Pineda drove onto the freeway, sometimes exceeding 100 miles per hour while driving on the shoulder. After she exited the freeway, she drove across a four-foot-wide planted concrete divider and drove westbound in the eastbound lanes. She then drove down the center line of residential streets, straddling eastbound and westbound lanes, and traveling at speeds of 70 to 80 miles per hour. She continued to drive at high speeds, driving the wrong way on residential streets and failing to stop at stop signs. Finally, she drove onto railroad tracks, and, given the danger, Officer Irwin called off the pursuit at that point. Within minutes, another officer found the truck, which

had crashed into a parked car. The driver and passenger were gone.

Officer Irwin and his partner searched the area. He testified that they found a wallet, which held a California identification card, credit cards and rewards cards, all in Pineda's name.

Officer Kakuk testified that when he opened the wallet, he immediately realized that the photograph on the identification card in the wallet was a photograph of the woman he saw at the gas station and who was the driver of the truck the officers had followed.

The jury found Pineda guilty of both charged felony counts, fleeing a pursuing officer while driving recklessly (Veh. Code, § 2800.2) and fleeing a pursuing officer and driving against traffic (Veh. Code, § 2800.4).

Pineda admitted four of the six prior offenses alleged in the information: she admitted a 2005 conviction of Vehicle Code section 10851 [vehicle theft]; a 2008 conviction of Penal Code section 496d, subdivision (a) [receipt of stolen vehicle]; a 2011 conviction of Penal Code section 666.5 [grand theft of a vehicle with a prior conviction of grand theft of a vehicle]; and a 2013 conviction of Vehicle Code section 2800.2 [fleeing a pursuing officer while driving recklessly]. The court struck the two remaining priors.

The court imposed a six-year term. The court chose the upper term of three years on count one (Veh. Code, § 2800.2), explaining that Pineda's driving at high speeds endangered many and constituted "reckless disregard for the safety of others" and that, in 2013, Pineda had been convicted of the same offense—fleeing a pursuing officer while driving recklessly. (Veh. Code,

§ 2800.2.) The court enhanced the sentence with three years, consisting of one year for each of three prior prison terms. (Pen. Code, § 667.5.) The court suspended the three-year sentence for count two. The court awarded credit of 498 days and imposed a restitution fine of \$300; a parole revocation fine of \$300; a criminal conviction fee of \$30; and a court security fee of \$40.

Pineda timely appealed.

DISCUSSION

After review of the record, Pineda's court-appointed appellate counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d 436. Via an October 18, 2017 letter, we advised appellant that she had 30 days within which to submit any contentions or issues that she wished us to consider. Pineda has not filed a supplemental brief.

We have examined the entire record and are satisfied that no arguable issues exist, and that Pineda has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against her in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.