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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

EPHRAIM FRANCISCO AVILA, JR.,

Defendant and Appellant.

H052656
(Santa Clara County
Super. Ct. No. C2208005)

Pursuant to a plea agreement, defendant Ephraim Francisco Avila, Jr., pleaded no contest to two counts of inflicting corporal injury on an intimate partner with specified prior conviction and one count of misdemeanor sexual battery. The trial court sentenced Avila to the stipulated term of 12 years four months in prison.

On appeal, Avila's appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) that states the case and facts but raises no issues. This court notified Avila of his right to submit written argument on his own behalf within 30 days. That period has elapsed, and we have received no response from Avila.

Pursuant to *Wende, supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), we have carefully reviewed the entire record and have determined there are no arguable issues on appeal that would result in a disposition more favorable to Avila. Accordingly, we will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A woman with whom Avila was in an intimate relationship testified at a preliminary hearing that she suffered from Avila's emotional, mental, and physical abuse. She testified that as she tried to leave one day, Avila grabbed a kitchen knife and sliced her face, leaving a scar. The woman was pregnant at the time. She testified that months later, after she gave birth, Avila engaged in various acts toward her including hitting her, kicking her, and engaging in sexual acts against her will.

The prosecution charged Avila by amended information with eight counts. The trial court denied Avila's motions to substitute his appointed counsel, to set aside a count for lack of evidence, and to dismiss a count for vindictive prosecution. Pursuant to a plea agreement, Avila then pleaded no contest to two counts of inflicting corporal injury on an intimate partner with specified prior conviction (Pen. Code, § 273.5, subd. (f)(1); counts 1 and 3),¹ and one count of misdemeanor sexual battery (§ 243.4, subd. (a); count 2). For count 1, Avila admitted allegations that he personally inflicted great bodily injury (§§ 12022.7, subd. (e), 1203, subd. (e)(3)) and personally used a deadly and dangerous weapon, a knife (§ 12022, subd. (b)(1)). The trial court sentenced Avila to the stipulated term of 12 years four months.

Avila timely appealed. The notice of appeal originally submitted with the appellate record contained Avila's request for a certificate of probable cause under section 1237.5 but showed no action by the trial court on the request. In response to this court's order, the superior court provided a copy of the notice of appeal in which the superior court granted the request for a certificate of probable cause.

II. DISCUSSION

Pursuant to *Wende, supra*, 25 Cal.3d 436, and *Kelly, supra*, 40 Cal.4th 106, we have carefully reviewed the entire record. We conclude there is no arguable issue on

¹ Unspecified statutory references are to the Penal Code.

appeal that would result in a disposition more favorable to Avila. (*Wende, supra*, at pp. 441-443.)

III. DISPOSITION

The judgment is affirmed.

Greenwood, P. J.

WE CONCUR:

Danner, J.

Bromberg, J.

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