

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and
Respondent,

v.

ABRAHAM HURTADO,

Defendant and
Appellant.

A173163

(Contra Costa County
Super. Ct. No. 04-24-01706)

Pursuant to a negotiated plea agreement, Abraham Hurtado pleaded guilty to felony counts of domestic violence and assault by means likely to produce great bodily injury and was placed on probation for five years. On this appeal, his appointed appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), in which she raises no issue and asks this court for an independent review of the record. Counsel attests that she advised Hurtado of his right to file a supplemental brief, but Hurtado has not filed one.

Having examined the entire record in accordance with *Wende*, we agree with counsel that there are no arguable issues requiring further briefing and affirm.

BACKGROUND

The incident underlying Hurtado's convictions occurred on August 27, 2024, at the residence where Hurtado lived with his brother Jose¹ and their mother. At about 1:25 a.m., Antioch police officers Downie and Desiderio responded to a report of a fight in which someone had a knife. According to the officers' testimony, Jose, Hurtado's mother and Hurtado's girlfriend, holding her child, came outside. Hurtado came to the door and shut it. He had a contusion on his head and scratches on his face. Hurtado did not respond to multiple phone calls or the officer's loud announcements for him to come out.

Hurtado's brother, Jose, had blood "all over his chest" and his hand was bleeding. Jose told the police he heard a commotion in the bedroom of Hurtado and Hurtado's girlfriend and, when he went in, Hurtado punched him in the face 20 to 30 times. Jose fell to the ground and Hurtado got on top of him, using his arm to choke Jose to the point that Jose began to have an asthma attack, then their mother came in and struck Hurtado with a radio. While Downie was interviewing Jose, he heard Jose tell Hurtado's girlfriend to tell the police that Hurtado hit her.

Hurtado's girlfriend, who had an injury to her lip, seemed "disheveled and upset" and appeared to Downie to be "slightly intoxicated." She was interviewed by Officer Desiderio, who testified that she was calm initially, then became more emotional, and that she appeared to have been consuming alcohol. She said the blood on her lip was from Hurtado punching her and injuries on her neck were from being strangled. She did not begin to provide

¹ We refer to Hurtado's brother by his first name for clarity. No disrespect is intended.

details about what happened until after Jose told her to tell the officers Hurtado hit her. Toward the end of the interview, when the officer asked if she needed medical attention, she said she was not injured.

About an hour after the officers left the residence, they were called back on a report that Hurtado was trying to kick the front door open. When the officers returned, Hurtado was walking across the street. Downie approached Hurtado and, due to the earlier report of a knife, drew his firearm and ordered Hurtado to stop. Hurtado kept walking. Downie and Desiderio tried to detain Hurtado, who tensed up and tried to walk away as the officers grabbed his arms. The officers “took him to the ground and put him in handcuffs.” Hurtado became verbally abusive as he was walked to the patrol vehicle, using profanity and racial slurs, and it took two officers to get him into the patrol car. It appeared to Downie that Hurtado was under the influence of a stimulant but the officer did not do a full examination. Downie did not see Hurtado with a knife and the officers who entered the residence did not tell him they found a bloody knife or weapon that could have been used to hurt Jose. Jose said he was cut either by glass during the struggle with Hurtado or on the door.

Jose testified that there was no physical altercation on the night of the incident; his mother called the police because of a verbal argument between the brothers; and he cut his hand when he slammed a door. He denied the statements about the physical fight the officers attributed to him and denied telling Hurtado’s girlfriend to say Hurtado hit her. Jose testified that he is diabetic and gets disoriented, dizzy and “delusional” after drinking alcohol, and that he had been drinking that night.

Hurtado’s girlfriend testified under court order. She and Hurtado had a two-year-old daughter and the girlfriend was pregnant at the time of the

August 27 incident. She testified that they were drinking that night and she did not remember anything after “a certain point.” She did not remember seeing or speaking with the police, even after being shown recorded footage of her talking with them. She testified that a mark on her neck but it was “from intimacy” and was there before the August 27 incident, and that the morning after the incident she did not have the “red stuff” on her lips that appeared in a photograph from the night before. She denied there having been any prior domestic violence incidents between her and Hurtado.²

Hurtado was charged by information filed on October 22, 2024, with felony domestic violence with a prior conviction for domestic violence (Pen. Code, § 273.5, subd. (f)(1))³ (count 1), two counts of felony assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)) (counts 2, 3), misdemeanor contempt of court (§ 1166, subd. (c)(1)) (count 4) and misdemeanor resisting, obstructing or delaying a peace officer (§ 148, subd. (a)(1)) (count 5). The information alleged two prior serious or violent felony convictions (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c)), for attempted voluntary manslaughter (§ 192/664) and criminal threats (§ 422), both from 2004. It alleged two aggravating circumstances related to the

² The girlfriend testified that there was a case from Stanislaus County that involved her falling into a bush with thorns while she and Hurtado were talking outside after a disagreement. She remembered telling the police Hurtado pushed her into the bush but testified that he did not do so deliberately, and she acknowledged that he broke the car window of a woman who offered her a ride away from Hurtado but she did not think he did this on purpose. The girlfriend thought the case had been dismissed, but it in fact resulted in a misdemeanor conviction (the prior conviction underlying count 1 in the present case) and Hurtado was on probation in that case when he committed the present offenses.

³ All further statutory references are to the Penal Code unless otherwise indicated.

crime (Cal. Rules of Court, rule 4.421(a))⁴ and five related to the defendant (rule 4.421(b)).

Pursuant to a negotiated disposition, Hurtado pleaded guilty to counts 1 and 3 and the remaining counts were dismissed.

On February 19, 2025, Hurtado signed a Felony Advisement of Rights, Waiver and Plea Form acknowledging his understanding and waiver of his constitutional rights, understanding of the consequences of pleading guilty, and voluntary entry of the plea. The plea form specified the maximum sentence and fines for the offenses Hurtado was pleading to, and that he would be placed on probation for 5 years, would serve 364 days in jail and, as of that date, had credit for 177 actual days.

At a hearing the same day, the court confirmed with Hurtado that he had initialed and signed the plea form after discussing the initialed matters with counsel and that he understood counsel's explanation of these matters. Counsel stipulated to the factual basis for the pleas. Hurtado confirmed that he had not been promised anything else to induce his pleas, had not been threatened, and was entering the pleas freely and voluntarily. Hurtado entered a plea of guilty to count 1, injuring a spouse or cohabitant with a prior, and admitted the alleged prior; pled guilty to count 3, assault by means likely to produce great bodily injury; and admitted two aggravating circumstances, that he was on probation, mandatory supervision or postrelease community supervision when the crime was committed (rule 4.421(b)(4))⁵ and that his prior performance on probation was unsatisfactory

⁴ All further references to rules are to the California Rules of Court.

⁵ The trial court incorrectly referred to this aggravating circumstance as rule 4.421(b)(3). This mistake appears to have originated with the information, which confused the section designations for several of the alleged aggravating circumstances. We give effect to the language of the

(rule 4.421(b)(5)). The court accepted Hurtado's pleas and admissions, finding each was made knowingly, intelligently and freely, with full knowledge of his rights and consequences.

Pursuant to the agreed disposition, the court placed Hurtado on probation for five years, ordered him to serve 364 days in county jail, and awarded 177 actual days of custody credit and 177 days of good conduct credit. Among the conditions of probation, Hurtado was ordered to complete a 52-week batterers treatment program and 40 hours of community service. The court issued a no-contact protective order for Hurtado's girlfriend (with allowance for telephone contact concerning the child). It issued a protective order that required Hurtado not to "abuse, harass, strike, threaten" Jose but did not include no contact or stay away provisions.⁶ Finding Hurtado did not have the ability to pay fees and fines, the court imposed and stayed the \$300 restitution fine and court assessments of \$60 and \$80. The court explained that a \$300 probation fine would be imposed if Hurtado was found to violate probation. Victim restitution was reserved.

relevant provisions, which both the information and the court stated correctly.

⁶ With respect to the girlfriend, the plea agreement acknowledged the possibility that the complete stay-away term could be modified to peaceful contact halfway through the batterer's classes, depending on circumstances at that time. At the conclusion of the preliminary hearing, the court had imposed a complete stay-away order protecting the girlfriend, the child and Jose. The girlfriend had asked the court not to impose a protective order or to order peaceful contact, as she felt the no-contact order was too extreme considering she and Hurtado shared a child. The court denied her request, explaining that the child was in the bedroom during the incident on August 27, 2024; Hurtado's criminal history included prior domestic violence, and he was on probation for domestic violence at the time of the present offenses the domestic violence.

Hurtado, in propria persona, filed a timely notice of appeal on April 18, 2025. He requested a certificate of probable cause, claiming he was forced to enter the plea agreement under duress and was denied effective assistance of counsel. He also submitted to the court a document entitled “Motion to Dismiss Due to Retaliatory/Vindictive Prosecution,” which was stamped “received” by the superior court. The trial court granted the request for a certificate of probable cause.

DISCUSSION

Pursuant to *Wende*, we are required “to conduct a review of the entire record whenever appointed counsel submits a brief which raises no specific issues or describes the appeal as frivolous.” (*Wende, supra*, 25 Cal.3d at p. 441; *Anders v. California* (1967) 386 U.S. 738.)

At the hearing on February 19, 2025, the court summarized the terms of the plea agreement and Hurtado confirmed that the summary sounded correct. The court questioned Hurtado about his understanding of and intention to accept the terms of the plea agreement, including that the initials and signature on the plea form were Hurtado’s. Hurtado confirmed that he had discussed the provisions of the plea form with counsel and understood them. The court asked Hurtado if anyone had promised anything else or threatened him in order to get him to enter the pleas and Hurtado said that no one had done so. Hurtado responded in the affirmative when the court asked if he was entering his pleas “freely and voluntarily because it’s the best way to handle all these matters.” Counsel stipulated to the factual basis for the pleas. The court found that Hurtado entered each of his pleas and admissions knowingly, intelligently and freely, with full knowledge of his rights and consequences. The record gives no indication Hurtado did not do so.

Hurtado was sentenced in accordance with the plea agreement. After discussing the terms and conditions of probation, the court confirmed that Hurtado understood and accepted them. The parties confirmed Hurtado's presentence custody credits. The court found Hurtado did not have the ability to pay the standard fines and fees and stayed the \$300 restitution fine and \$60 and \$80 assessments; explained to Hurtado that a probation revocation fine would be imposed only if he violated probation; and informed him of his right to a hearing if he disagreed with any amount of victim restitution ordered in the future.

The record reflects that Hurtado had a number of complaints about his representation by defense counsel and treatment by the prosecution but provides little explanation of them. Hurtado expressed dissatisfaction with his public defender at the outset of the preliminary hearing on October 17, 2024, and told the court he was seeking private counsel, but he did not yet have a private attorney and the court did not find grounds for substitution under *People v. Marsden* (1970) 2 Cal.3d 118. A subsequent *Marsden* motion was granted soon after the information was filed and the public defender was replaced by an attorney from the alternate defenders' office. By mid-December 2024, Hurtado was represented by the private attorney who represented him through the plea process. Subsequently, in his *in propria persona* request for a certificate of probable cause and "Motion to Dismiss Due to Retaliatory/Vindictive Prosecution," Hurtado claimed he received ineffective assistance of counsel from all three attorneys, but he offered no explanation of the basis of the claims.

Similarly, while the title of Hurtado's motion to dismiss indicated it was grounded on a claim of vindictive prosecution, the contents did not elaborate the claim. The motion referred to section 632 (eavesdropping on or

recording confidential communications) and stated, “prosecution uses dilatory tactics by eavesdropping on my phone calls by preparing there [sic] defense,” but provided no factual support or explanation. The motion discussed legal principles pertaining to vindictive prosecution but did not suggest how they applied to this case.⁷

Notwithstanding Hurtado’s claims in the trial court and the advisement from appellate counsel that Hurtado had a right to file a supplemental brief raising any issues he wanted to bring to this court’s attention, Hurtado has not filed a brief in this court. Counsel found no arguable issues for appeal. Our review of the record reveals no arguable issues requiring further briefing. Accordingly, we affirm.

DISPOSITION

The judgment is affirmed.

⁷ The remainder of Hurtado’s motion adverted to various issues without elaboration or explanation. These included assertions that Hurtado requested transcripts that were withheld and made a request for a speedy trial to his lawyer, and that the denial of his request to reduce bail violated his due process rights. Other issues appear to have no relation to this case—citation to a rule of court pertaining to dismissal of civil cases (rule 3.1342) and reference (without citation) to *Beaudreau v. Superior Court*, which appears to be a civil case holding unconstitutional two statutes requiring plaintiffs in suits against public entities to file an undertaking as security for allowable costs that might be awarded. (*Beaudreau v. Superior Court* (1975) 14 Cal.3d 448.)

STEWART, P. J.

We concur.

RICHMAN, J.

DESAUTELS, J.

People v. Hurtado (A173163)