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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JASON DANIEL BARTOLOMEI, Defendant and Appellant.	A108031 (Mendocino County Super. Ct. Nos. SCWLCRCR04-58762, SCUKCRCR04-58993)

Defendant Jason Daniel Bartolomei's counsel has filed an opening brief in which he raised no issues and asked this court for an independent review of the record. (*People v. Wende (*1979) 25 Cal.3d 436.)

Defendant was charged by complaint on February 9, 2004, in case No. SCWLCRCR04-58762 (case No. 04-58762) with corporal injury to a spouse (Pen. Code,[1] § 273.5, subd. (a)) (count one); possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) (count two); criminal threat (§ 422) (count three); and a second count of corporal injury to a spouse (§ 273.5, subd. (a)) (count four). Counts one, three, and four included special allegations that defendant had been previously convicted of false imprisonment (§ 236) and had not remained free of prison custody for five years (§ 667.5).

Defendant was charged on February 26, 2004, in case No. SCUKCRCR04-58993 (case No. 04-58993) with felony vandalism in excess of $400. (§ 594, subd. (b)(1)). The

[1] All undesignated statutory references are to the Penal Code.

complaint alleged defendant had damaged safety glass belonging to the Mendocino County Sheriff's Department.[2]

Defendant pled guilty to count one in case No. 04-58762 and no contest to the allegations in case No. 04-58993. The remaining charges were dismissed. Defendant stipulated he would receive a five-year eight-month prison sentence, which would be suspended, and that he would be placed on probation. Before entering his plea, defendant was informed of and waived his constitutional rights. He indicated he understood that if he violated the terms of probation, the sentence would be imposed and he would thereafter be placed on parole. He admitted the special allegation in connection with the spousal injury charge. For the factual basis to the charges, defendant admitted that he had hit his girlfriend in the face, causing her injury; and that when being visited by a doctor, he had damaged the glass between the doctor and himself.

Pursuant to the stipulation, the trial court imposed a sentence of five years eight months, based on the aggravated term of four years for the spousal injury charge (§ 273.5, subd. (a)), an additional year for the special allegation (§ 667.5, subd. (b)), and eight months for the vandalism charge, as one-third of the midterm (§§ 594, subd. (b)(1), 18). The trial court reviewed the factors in aggravation and mitigation with respect to the spousal injury charge; aggravating factors were the great violence and bodily injury, the number and increasing seriousness of defendant's prior convictions, his prior prison term, and his prior unsatisfactory performance on parole and probation. For his probation in case No. 04-58762, defendant was ordered to serve a one-year term in county jail, and given credit for 94 days served. In case No. 04-58993, defendant was placed on a separate three-year probation. Defendant accepted the terms and conditions of his probation.

A petition alleging a violation of defendant's probation was filed on August 31, 2004. According to the petition, defendant failed to contact his officer when requested to do so; he was removed from his work crew when he lost his temper and began throwing things; he became angry and broke a jail-issued cup; he was insolent and refused to lock

[2] The vandalism episode took place while defendant was in jail.

down when ordered; and he threatened a corrections officer. These actions were alleged to violate the probation conditions that defendant obey his probation officer's orders and that he obey the rules and regulations of the Mendocino County Jail. The petition was amended to include an allegation that defendant became involved in a verbal confrontation with a classification officer. Defendant admitted two probation violations after being informed of the rights he was relinquishing, and defendant's counsel stipulated to a factual basis for the admission. The trial court revoked probation in both cases, lifted the suspension of the previously imposed sentence of five years eight months in prison, and granted credit for 384 days. The court imposed restitution fines of $1,200, with further fines of $1,200 suspended pursuant to section 1202.45.[3]

Defendant was represented by counsel throughout the proceedings. He admitted the charges knowingly and intelligently. He entered his pleas with the understanding that he could be sentenced to imprisonment for five years eight months, and thus necessarily admitted his conduct was sufficient to expose him to that punishment. While the trial court misstated the statutory basis for the restitution fine, the fine was authorized under section 1202.4 and defendant made no objection at sentencing. There was no other error in the disposition. There are no meritorious issues to be argued on appeal.

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[3] The trial court appears to have misstated the statutory basis for the first $1,200 fines. The court said that the first fines were imposed pursuant to Government Code section 13967. That section had been repealed at the time of sentencing. However, the fine was consistent with the guidelines of Penal Code section 1202.4, subdivision (b). Defendant was not prejudiced by the trial court misstating the statute it relied on in imposing the fine; and in any case, it appears that he waived any error by failing to object at the time of sentencing. (See *People v. Scott* (1994) 9 Cal.4th 331, 353 [waiver doctrine applies to "claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices"].)

DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

KAY, P.J.

REARDON, J.