

-APPENDIX A-

SUPREME COURT OF CALIFORNIA

DENIAL OF MARY 9, 2022

Court of Appeal, Second Appellate District, Division Three - No. B309944

S273482

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

SUPREME COURT
FILED

v.

MOSES CLARK, Defendant and Appellant.

APR 13 2022
Jorge Navarrete Clerk

Deputy

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

May 9, 2022

Moses Clark # BP-1401
California Rehabilitation Center
P.O. Box 3535
Norco, California 92860

Re: **S273482 – People v. Moses Clark**

Dear Mr. Clark:

On April 13, 2022, the court denied the above noted matter. The above noted matter is now closed in this court. Enclosed is the order issued on April 13, 2022.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

By: F. Jimenez, Assistant Deputy Clerk

cc: Rec.

Enclosure

APPENDIX E

OFFICIAL REPORT NOT TO BE PUBLISHED COURT OF APPEAL
SECOND APPELLATE DISTRICT DIVISION THREE

February 1, 2022

FILED

Feb 04, 2022

DANIEL P. POTTER, Clerk

R. Cervantes Deputy Clerk

Filed 2/4/22

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

MOSES CLARK,

Defendant and Appellant.

B309944

(Los Angeles County
Super. Ct. No. BA487329)

APPEAL from a judgment of the Superior Court of Los Angeles County, Curtis Rappe, Judge. Affirmed.

Moses Clark, in pro. per.; and Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Moses Clark appeals from a no contest plea to a domestic violence-related offense. His counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), requesting that we independently review the appeal.

According to evidence introduced at the preliminary hearing, Los Angeles Police Officers Bridgette Puentes and Brett Ramirez were on patrol on the early morning of May 15, 2020. They testified that a woman flagged them down that morning and said a man had punched her in the face multiple times. She was bleeding on her mouth and around her lips, she had a small laceration on her cheek, and she was missing a tooth.¹ Clark came outside, and the woman identified him as her assailant. The woman added that she and Clark had been in an on-and-off relationship for years and had children together. That night, they argued, and when she refused to have sex with Clark, he punched her and urinated on her. Officer Ramirez read Clark his *Miranda*² rights, which he waived. Clark told the officers that when the victim refused to perform a sex act on him, he urinated on her. When the officers asked Clark to identify himself, he gave a fake name. During these events, protective orders were in effect against Clark.

An information charged Clark with two counts of injuring his girlfriend after suffering a conviction under Penal Code³ section 243, subdivision (e) (§ 273.5, subd. (a), counts 1 & 4); two

¹ The missing tooth resulted from a prior incident of domestic violence involving Clark.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

³ All further undesignated statutory references are to the Penal Code.

counts of violating a domestic violence court order with a prior conviction (§ 166, subd. (c)(4); counts 2 & 5); and one count of giving false information to a police officer (§ 148.9, subd. (a); count 3). The information also alleged that Clark had four prior convictions under section 243, subdivision (e), within seven years of the current offenses as to counts 1 to 4; a great bodily injury enhancement as to count 4 (§ 12022.7, subd. (e)); two prior strikes within the meaning of the Three Strikes law; and two prior serious felonies (§ 667, subd. (a)(1)).

Clark moved to suppress any illegal confession, and the trial court denied the motion.

On November 19, 2020, Clark pled no contest to count 4, admitted that he had a prior domestic violence conviction in violation of section 243, subdivision (e)(1), dated July 24, 2019, and admitted the great bodily injury enhancement.⁴ The trial court sentenced him to seven years in prison comprised of four years plus three years for the enhancement, imposed a \$300 restitution fine (§ 1202.4, subd. (b)), and imposed a \$300 parole revocation fine, suspended (§ 1202.45).

Clark filed a notice of appeal and requested a certificate of probable cause, which the trial court denied.

Clark's court-appointed counsel then filed an opening brief that raised no issues and asked this court to independently review the record under *Wende, supra*, 25 Cal.3d 436.

On December 8, 2021, Clark filed a supplemental brief that requested resentencing under Senate Bill No. 483. However, Senate Bill No. 483 (Stats. 2021, ch. 728), which became effective

⁴ Clark did not admit a factual basis for the plea, per *People v. West* (1970) 3 Cal.3d 595.

January 1, 2022, declared enhancements imposed under Health and Safety Code section 11370.2 before January 1, 2018, legally invalid. Clark's sentence did not include a term on such an enhancement, and therefore that new law has no applicability.

Then, on January 13, 2022, we gave Clark permission to file a second supplemental brief, raising what appear to be pre-plea issues: he was not arraigned within 48 hours of arrest, his preliminary hearing was vindictively delayed, he was denied the right to view the police officers' body cam videos and other exculpatory evidence before the preliminary hearing, the trial court failed to grant Clark's challenge to the judge for prejudice, there were problems with identification witness testimony, the trial court failed to determine the foundational admissibility of the prosecution's evidence against him, his confrontation rights were violated, his motions to recall his sentence have been erroneously and vindictively denied, and he was prosecuted twice for the same crime in violation of the double jeopardy clause.⁵

A defendant such as Clark who appeals following a plea of no contest or guilty without a certificate of probable cause may only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Johnson* (2009) 47 Cal.4th 668, 676–677 & fn. 3.) We have reviewed Clark's motion to suppress his statements and discern no error in the trial court's ruling denying it. With respect to sentencing or post-plea issues that do not in substance

⁵ Clark also appeared to raise a concern about his appellate counsel. To the extent he intended to make a motion under *People v. Marsden* (1970) 2 Cal.3d 118, to relieve counsel, it is denied as it states no grounds.

challenge the validity of the plea itself, we have examined the record and are satisfied no arguable issues exist and Clark's attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 125–126; *Wende, supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.

**Additional material
from this filing is
available in the
Clerk's Office.**