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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN LEE MALEAR,

Defendant and Appellant.

A129913

(Lake County Super. Ct.  
No. CR923098)

Defendant Steven Lee Malear appeals from a judgment and sentence of four years in state prison after he pleaded no contest to a violation of Penal Code section 273.5, subdivision (a), corporal injury to a cohabitant. Defendant's counsel has filed an opening brief that raises no issues and asks this court for an independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised of his right to file a supplemental brief and has not done so. We have reviewed the record on appeal and find there are no meritorious issues to argue or brief. The judgment is affirmed.

**Background**

On August 6, 2010, after plea negotiations, defendant with the assistance of counsel initialed each of the applicable boxes in a plea form with waiver of rights that explained the terms of his plea, the consequences, and waiver of constitutional rights, with an indicated possible maximum term of four years in state prison. Two other pending counts were dismissed, and another pending case was also dismissed in return for defendant's no contest plea to the Penal Code section 273.5, subdivision (a) charge.

The court orally questioned defendant about his plea and waiver of rights, made findings, and accepted and approved defendant's plea, admissions, and waiver of rights.

On August 27, 2010, the court held a lengthy sentencing hearing. After an initial discussion about withdrawal of his plea, defendant and his counsel agreed to go forward with the sentencing hearing. Defense counsel urged the court to grant probation with county jail time so that his client could enter a long-term residential substance abuse program. The court reviewed the probation department's recommendation for probation, listened to defendant's ex-girlfriend's narration of violent threats against her and her child, her family, and threatening calls to her work place, considered defense counsel's arguments regarding factors in mitigation, listened to defendant's personal explanation and remorsefulness, and carefully considered defendant's extensive criminal record. The court articulated and weighed circumstances in mitigation against circumstances in aggravation and imposed the upper term of four years to which defendant and his counsel strenuously objected. Appropriate fines were imposed and custody credits awarded.

### **Disposition**

There was no error in the proceedings. The record does not indicate any abuse of discretion in the sentence imposed. The judgment is affirmed.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Banke, J.