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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ALAN ALAMILLO,

Defendant and Appellant.

2d Crim. No. B284201
(Super. Ct. No. GA100753)
(Los Angeles County)

Alan Alamillo pled guilty to grand theft (Pen. Code, § 487, subd. (a)), fleeing a police officer while driving recklessly (Veh. Code, § 2800.2), and assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The trial court found that the deadly weapon Alamillo used was a vehicle, and sentenced him to four years four months in prison. Alamillo contends counsel was ineffective because she did not suggest he plead open to the charges in the information and request that the court strike the reference to the vehicle as a deadly weapon so he could avoid a lifetime revocation of his driving privileges. We affirm.

FACTUAL AND PROCEDURAL HISTORY

In January 2017, Alamillo and two other individuals broke into an electronics store and took six laptop computers.

In March 2017, police were alerted that someone took a package containing more than \$1500 of merchandise from a residence. An officer responded and saw a stolen U-Haul truck, driven by Alamillo, in the vicinity. She followed the truck and pulled her patrol vehicle behind it when it entered a parking lot. Alamillo backed the truck toward the officer's vehicle. She yelled for him to stop, but he did not. The officer backed her vehicle away from the truck, and Alamillo drove out of the parking lot.

The officer pursued the U-Haul. During the pursuit, Alamillo reached speeds of up to 90 miles per hour, drove on the wrong side of the road, and failed to stop at stop signs and stop lights. The officer terminated her pursuit because Alamillo's driving was creating a risk to others.

Later that morning, a man stopped his car at a red light. Alamillo pulled up behind him and honked the horn. When the man did not move his car, Alamillo bumped it with the truck. When the man still did not move, Alamillo backed up and drove into the man's car, pushing it into the crosswalk. Alamillo then drove around the car and onto the freeway, sideswiping the driver's side.

After another pursuit, police officers stopped the U-Haul and arrested Alamillo's passenger, Ilena Rutledge, as she tried to run away. Alamillo rode away on a bicycle placed in the back of the truck. Rutledge later identified him to police.

The prosecution charged Alamillo with five counts related to the March incidents: grand theft (Pen. Code, § 487, subd. (a); count 1); fleeing a police officer while driving recklessly

(Veh. Code, § 2800.2; count 2); assault with a deadly weapon, “to wit, vehicle” (Pen. Code, § 245, subd. (a)(1); count 3); driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count 4); and second degree commercial burglary (Pen. Code, § 459; count 5). Alamillo was also charged with second degree commercial burglary for the January incident at the electronics store (count 6).

Alamillo agreed to plead guilty to counts 1 through 3 in exchange for a sentence of four years four months in prison. While taking Alamillo’s plea, the prosecutor advised him that the DMV would revoke his driving privileges for life as a consequence of the assault conviction. (See Veh. Code, § 13351.5.) Defense counsel said she was not aware of the license revocation statute, and conferred with Alamillo.

The trial court told Alamillo it would find that the deadly weapon he used in the assault was a vehicle, which would result in a lifetime revocation of his driver’s license. Alamillo said that he understood and wanted to proceed with the plea. The court found Alamillo guilty of counts 1 through 3, imposed the stipulated sentence, and dismissed counts 4 through 6.

DISCUSSION

Alamillo contends trial counsel provided ineffective assistance because she did not suggest he plead open to the information. In his view, that would have allowed the trial court to exercise its discretion to strike “to wit, vehicle” from the assault charged in count 3. We disagree.

A defendant is entitled to effective assistance of counsel during plea negotiations (*McMann v. Richardson* (1970) 397 U.S. 759, 770-771) and at sentencing (*Gardner v. Florida* (1977) 430 U.S. 349, 358). To establish his ineffective assistance

of counsel claim, Alamillo must show that counsel's performance was deficient and resulted in prejudice. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1003; see *Strickland v. Washington* (1984) 466 U.S. 668, 687.) Counsel's performance was deficient if the record reveals no conceivable reason for her actions. (*Cunningham*, at p. 1003.) Alamillo was prejudiced if there is a "reasonable probability" he would have obtained a more favorable result absent counsel's alleged errors. (*Ibid.*) We independently review whether Alamillo has demonstrated ineffective assistance of counsel. (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.)

He has not. Alamillo does not show that counsel performed deficiently because the record does not disclose whether she discussed an open plea with him. (*People v. Lucero* (2000) 23 Cal.4th 692, 728-729.) And it is conceivable that she did not suggest he plead open to the information because doing so would have exposed him to three more convictions and two more years in prison. (*People v. Cotton* (1991) 230 Cal.App.3d 1072, 1085; see Pen. Code, §§ 461, subd. (b), 1170, subd. (h)(1); Veh. Code, § 10851, subd. (a).)

The cases on which Alamillo relies do not suggest counsel performed deficiently here. In *Browning v. Baker* (9th Cir. 2017) 875 F.3d 444, 472-474, an attorney's failure to investigate was not a reasonable tactic because "there [was] no reason to believe [that] doing so would be fruitless or harmful." Here, in contrast, an open plea could have harmed Alamillo by exposing him to a longer sentence. In *Weeden v. Johnson* (9th Cir. 2017) 854 F.3d 1063, 1070-1071, an attorney's failure to have the defendant undergo a psychological evaluation was unreasonable because it may have exculpated the defendant for her crime. Here, Alamillo identifies no investigation counsel

could have undertaken that would have exculpated him from his crimes.

Alamillo also does not show prejudice. The record does not indicate that Alamillo would have accepted an open plea over the prosecution's proffered plea bargain. (Cf. *In re Horton* (1991) 54 Cal.3d 82, 95 [defendant's decision whether to plead guilty].) Even if we were to assume he would have, to establish prejudice Alamillo must show that the open plea would have resulted in a lesser sentence than he received under the plea. (*Lafler v. Cooper* (2012) 566 U.S. 156, 164; see *Hill v. Lockhart* (1985) 474 U.S. 52, 59.) But an open plea could have resulted in a longer sentence and more convictions. Alamillo thus has not established his ineffective assistance of counsel claim.

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Henry J. Hall, Judge

Superior Court County of Los Angeles

James Koester, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Senior
Assistant Attorney General, William H. Shin and Mary Sanchez,
Deputy Attorneys General, for Plaintiff and Respondent.