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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS BENSON ALLEN,

Defendant and Appellant.

B284493

(Los Angeles County
Super. Ct. No. MA070418)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen I. Goorvitch, Judge. Affirmed.

William G. Holzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Thomas Benson Allen appeals following his conviction, by jury, of two counts of robbery (Pen. Code, § 211).¹ The trial court placed defendant on a grant of formal probation. Defendant's appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), requesting this court independently review the record on appeal for any arguable issues. Having done so, we order correction of the minutes to accurately reflect the jury's verdict and the required fees and assessments, and affirm the judgment in all other respects.

BACKGROUND

Manuel Zurito and Dani Laino posted an ad on Facebook to sell a gold ring. Defendant arranged to buy the ring. The parties met at a parking lot to complete the transaction. Zurito handed the ring to defendant for inspection. Defendant then ran away with the ring. Zurito chased defendant, grabbed him, and brought him to the ground. They struggled on the ground.

Laino joined the struggle. Defendant's arm became entangled in Laino's purse and she was pulled down to the ground. Laino bit defendant's head to break free. Defendant dropped the ring. Afterward, defendant admitted to Deputy Christopher Morris that he had intended to steal the ring.

The prosecution charged defendant with the robbery of Zurito (count 1; § 211); the lesser included offense of theft from Zurito (count 2; § 487, subd. (a)); and the robbery of Laino (count 3; § 211). The jury convicted defendant of the two robbery charges. As instructed, the jury reached no verdict on the count 2

¹ Unless otherwise noted, all statutory references are to the California Penal Code.

theft charge because it was a lesser included offense of the count 1 robbery charge.

At the sentencing hearing on August 7, 2017, the court placed defendant on five years of formal probation. The court ordered defendant to serve 365 days of custody, and awarded credits against that probation condition. The court also ordered that defendant complete 60 days of community labor and 300 hours of community service. The court ordered minimum fines and fees.

DISCUSSION

We appointed counsel to represent defendant on this appeal. After reviewing the record, defendant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d at page 441.

In a letter dated February 2, 2018, defense counsel advised defendant of the nature of his *Wende* brief; he further advised his client that he had the right to file a supplemental brief within 30 days of counsel filing his opening brief. Defendant did not file a supplemental brief.

We have examined the entire record. We are satisfied no arguable issues exist and defendant's appellate counsel has fully satisfied his responsibilities under *Wende*. (*Smith v. Robbins* (2000) 528 U.S. 259, 279-284; *Wende, supra*, 25 Cal.3d at p. 441; see *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

However, we note that the trial court's minute order reflecting the conviction date of August 4, 2017, contains an error. In the minutes, the court clerk reported that, as to count 2, the jury acquitted the defendant. In fact, the jury returned an unsigned verdict form as to count 2, a lesser included offense of

count 1. The jury correctly declined to sign that verdict form pursuant to the court's instructions once the jury convicted defendant of count 1.

We also note that the minute order shows the imposition of a criminal conviction assessment of \$30 (Gov. Code, § 70373) and a court operations assessment of \$40 (Pen. Code, § 1465.8, subd. (a)(1)) for count 1. These assessments must also be imposed on count 3. (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1372 [court operations assessment]; *People v. Calles* (2002) 209 Cal.App.4th 1200, 1226 [criminal conviction assessment].)

The minute order should be corrected. (*People v. Mesa* (1975) 14 Cal.3d 466, 471 [oral pronouncement of judgment governs over written minutes]; see *People v. Mitchell* (2001) 26 Cal.4th 181, 184-185 [appellate court has inherent power to correct clerical errors].)

DISPOSITION

The clerk of the trial court is directed to correct the minutes of August 4, 2017, consistent with this opinion. In all other respects, the judgment is affirmed.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.