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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOVANI CRUZ,

Defendant and Appellant.

B271950

(Los Angeles County
Super. Ct. No. SA091154)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, Lauren Weis Birnstein, Judge. Affirmed.

Christopher Nalls, 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, Stacy S. Schwartz, Deputy Attorney General, for Plaintiff and Respondent.

Pursuant to a negotiated agreement Jovani Cruz pleaded no contest to two felony charges and admitted the truth of special allegations that he had suffered four prior felony convictions. On appeal Cruz contends the court misunderstood its sentencing discretion under the agreement when it sentenced him to six years in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Felony Complaint

A felony complaint filed August 28, 2015 and amended by interlineations on October 7, 2015 charged Cruz with receiving a stolen vehicle with a prior felony conviction involving an automobile (Pen. Code, § 666.5) (count 1)¹ and two counts of driving or taking a vehicle without consent after a similar prior felony conviction (§ 666.5; Veh. Code, § 10851) (counts 2 and 3) and specially alleged he had served four separate prison terms for felonies (§ 667.5, subd. (b)).

2. Cruz's Negotiated Plea

On October 7, 2015, pursuant to a negotiated agreement with the People, Cruz pleaded no contest to receiving a stolen vehicle with a prior conviction and one count of driving or taking a vehicle without consent after a prior conviction and admitted the truth of the special allegations. Under the terms of the plea agreement, one of the unlawful taking charges (count 2) was to be dismissed. The remaining aspects of the plea agreement depended on Cruz's conduct after he was released on his own recognizance pending the October 19, 2015 sentencing hearing:

¹ Statutory references are to this code unless otherwise stated.

(1) If at the time of sentencing Cruz returned the victim's passport and social security card, which had been in the stolen vehicle, Cruz would be permitted to withdraw his plea to receiving stolen property (count 1); that count would be dismissed and Cruz would receive a 16-month sentence for driving or taking a motor vehicle without consent. (2) If Cruz appeared at sentencing without the victim's property, he would be sentenced to the middle term of three years for receiving stolen property; and the second count would be dismissed. (3) If, without good cause, Cruz did not return for sentencing and an arrest warrant needed to be issued, his plea would become an open plea; and Cruz would receive the high term of four years for receiving stolen property, plus an additional one or two years, depending on whether one or more than one of Cruz's prior convictions qualified for a section 667.5 sentence enhancement.² These conditions were stated by the court and enumerated in a plea form Cruz signed.³

² As to the uncertainty whether Cruz would receive a state prison sentence of five or six years if he failed to voluntarily return, the court explained, "We are not completely sure if you serve[d] separate commitments for your state prison—for your prior offenses. If you only went to state prison one time, they can only add one year to the high term, which is four plus one, which would be five. . . . But if you went to state prison at separate times for different cases, then perhaps they can—they will have two years. It would be six years that you could receive if you do not come back [and] they have to find you somewhere."

³ The plea agreement stated, "If [Cruz] does not return at all, it becomes an open sentence and [Cruz] will receive 5 or 6 yrs state prison."

3. *The Sentencing Hearing*

Cruz did not appear for his sentencing hearing, and a bench warrant issued for his arrest. At a March 11, 2016 sentencing hearing following his arrest on the warrant, the same judge who had taken Cruz's plea reviewed the transcript from the October 7, 2015 hearing and the terms of the plea agreement and sentenced Cruz to an aggregate state prison term of six years: four years for receiving stolen property plus two years for two separate felony prison terms pursuant to section 667.5, subdivision (b). The court dismissed the remaining count of driving or taking a vehicle without consent. Cruz filed a timely notice of appeal and obtained a certificate of probable cause.

DISCUSSION

1. *Governing Law*

"A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles." (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) It is, in effect, a "tripartite agreement which requires the consent of the defendant, the People and the court." [Citations.] 'Acceptance of the agreement binds the court and the parties to the agreement.'" (*People v. Feyrer* (2010) 48 Cal.4th 426, 437; accord, *Shelton*, at p. 767.) Thus, "[a]lthough a plea agreement does not divest the court of its inherent sentencing discretion, 'a judge who has accepted a plea bargain is bound to impose a sentence within the limits of that bargain.'" (*People v. Segura* (2008) 44 Cal.4th 921, 931.)

2. *The Court Did Not Misapprehend Its Discretion When It Sentenced Cruz to Six Years in State Prison*

Cruz concedes his six-year sentence was authorized under the agreement if he failed to appear at sentencing. However, emphasizing language in the plea form that he could be

sentenced to “five or six” years if he failed to appear, Cruz contends the court erred when it stated the terms of the sentence had been described in the plea and it “really had no power to do anything.” That is, Cruz argues the court mistakenly believed it had no discretion and thus erroneously concluded it had no choice but to impose the maximum six-year term rather than the lesser five-year alternative also contemplated by the agreement. (See *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1391 [“Defendants are entitled to sentencing decisions made in the exercise of the “informed discretion” of the sentencing court. [Citations.] A court which is unaware of the scope of its discretionary powers can no more exercise that “informed discretion” than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant’s record.”]; *People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8.)

Nothing in this record suggests the court misunderstood its sentencing discretion. To the contrary, the court informed Cruz prior to taking his plea that, if Cruz failed to appear at sentencing, it intended to sentence him to five or six years depending on whether one or more than one specially alleged prior prison terms qualified for a section 667.5 enhancement. (See § 667.5, subd. (b) [enhancing sentence by one year “for each prior separate prison term”].) Cruz does not contend only one of the four prior convictions he admitted qualified for a section 667.5 enhancement. There was no error.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

MENETREZ, J.*

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