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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIK CORNEJO,

Defendant and Appellant.

B243422

(Los Angeles County Super. Ct.
No. KA097235)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, Richard B. Lennon, Staff Attorney, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Facing a maximum of 16 years in state prison following a preliminary hearing in which victim Fernando Romero testified that he was robbed of his cell phone and wallet at gunpoint by defendant and appellant Erik Cornejo and codefendant Alfredo Cruz,¹ defendant accepted the prosecution's offer of a case disposition of six years in state prison. Defendant obtained a certificate of probable cause to appeal.

This court appointed counsel to represent defendant on appeal. Appointed counsel filed a brief raising no appellate issues but asked this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was notified of his right to file a supplemental letter brief.

Defendant has filed a letter brief raising the following issues: (1) the trial judge forced defendant to admit that a principal was armed with a handgun, even though defendant "did not know because [he] wasn't there"; (2) he "did not want to take the deal" but was advised to plead by his court appointed attorney who did not believe him and said she was going to do "a half ass job on this case," depriving him of the effective assistance of counsel; (3) he is innocent and the victim of mistaken identity; and (4) he was subject to double punishment because codefendant had a prior conviction under the three strikes law.

The record reflects that defendant was offered a sentence of 12 years in state prison at his arraignment on the information. Defendant rejected the offer and the case was set for a readiness conference. At the readiness conference, it was disclosed that the prosecution received permission to offer defendant a six-year prison sentence to settle the case. Defendant wanted to accept the disposition, but the offer also required a plea by codefendant, who was unwilling to accept a 16-year offer.

After a break in proceedings, codefendant had a change of heart and agreed to accept the prosecutor's offer. The trial court explained to defendant he would receive the high term of five years on the charged robbery and a one year enhancement because a principal was armed with a firearm. Defendant told the court he understood the

¹ Cruz is not a party to this appeal.

settlement terms. After being fully advised of his constitutional rights and the consequences of his plea and admission, defendant plead no contest to the charge of robbery and admitted the principal armed allegation, with the court explaining that if defendant did not make the admission, “you’re going to trial as of Monday.” Defendant admitted the armed allegation, his plea and admission were received, and he was sentenced to six years in state prison.

Defendant’s contention that the trial judge forced defendant to admit that a principal was armed with a handgun, even though defendant “did not know because [he] wasn’t there,” is not supported by the record. The reporter’s transcript of the plea contains no statement by defendant that he was not present at the robbery. To the contrary, defendant had, at an early stage of proceedings, expressed his interest in accepting the prosecutor’s offer of six years in state prison.

Defendant’s argument that he was denied the effective assistance of counsel is also not shown in the appellate record. The record does demonstrate that counsel obtained a 50 percent reduction in the offer to settle the case, from 12 to 6 years, and defendant willingly accepted the proposition. Any complaint defendant may have regarding counsel must be raised by another remedy, such as petition for writ of habeas corpus. “‘If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.) Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus.’ (*People v. Carter* (2003) 30 Cal.4th 1166, 1211.)” (*People v. Gray* (2005) 37 Cal.4th 168, 207.)

Defendant’s final two contentions—that he is the victim of mistaken identity and he was subject to double punishment because codefendant had a prior conviction under the three strikes law—are simply not borne out by the record on appeal. The only indications of guilt or innocence in the record point only to defendant’s guilt. The preliminary hearing transcript contains uncontroverted evidence that defendant was an

active gang member who assisted in the robbery at gunpoint of the victim. Proceedings after arraignment on the information show defendant's professed desire to settle the case by plea. Nor was defendant punished because codefendant had a strike prior conviction. That prior conviction was never mentioned in regard to defendant, and codefendant's sentence, ten years longer than that of defendant, is explained by codefendant's prior conviction. Defendant has not carried his burden of demonstrating prejudicial error. (Cal. Const., art. VI, §13.)

We have completed our independent examination of all aspects of this case. No arguable appellate issues exist. The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.