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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.

DONALD FRANK NEW,

Defendant and Appellant.

B279214

(Los Angeles County  
Super. Ct. No. MA067846)

APPEAL from a judgment of the Superior Court of Los Angeles County. Frank M. Tavelman, Judge. Affirmed.

Kevin E. Lerman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \* \* \*

Defendant Donald Frank New was charged by amended information with one count of robbery (Pen. Code, § 211), one count of contributing to the delinquency of a minor (§ 272, subd. (a)(1)), and three counts of child endangerment (§ 273a, subd. (b)). It was also alleged that he suffered a prior strike and serious felony conviction (§§ 667, subd. (a)(1), 667, subd. (d), 1170.12, subd. (b)). He was convicted by jury of all counts, and the special allegations were found true by the trial court.

The trial court denied defendant's motion to strike his 2002 conviction for assault with a deadly weapon. Defendant was sentenced to an aggregate term of nine and one-half years, consisting of the low term for robbery, doubled because of the strike prior, plus five years for his serious felony conviction, plus a consecutive 180-day term for contributing to the delinquency of a minor. The 180-day terms for the child endangerment counts were to run concurrently.

The following facts were adduced at trial. Defendant, his minor stepson, and his three small children entered a Lancaster Home Depot, and caught the attention of loss prevention associates Michael Kassens and Vyron Harris because of their suspicious behavior. Defendant and his stepson took two ratchet tools and a battery pack, cut open and discarded the packaging, concealed the merchandise in a backpack, and left the store without paying. Mr. Kassens believed that defendant had a knife that he used to remove the packaging. Mr. Kassens and Mr. Harris followed the group out of the store, and attempted to "stop the defendant for shoplifting." When Mr. Kassens identified himself as a loss prevention associate, defendant put his hand into his jacket pocket, where Mr. Kassens believed defendant had put the knife, and said, "Touch me and see what

happens.” Mr. Kassens felt threatened, so he and his partner retreated. Mr. Harris called 911.

Defendant and the minors fled the scene, and ran across a busy street to a shopping center. Cars had to apply their brakes to avoid hitting them. At the shopping center, defendant threw the stolen items onto the roof of a CVS pharmacy. Defendant was intercepted by sheriff’s deputies and arrested.

Defendant filed a notice of appeal. We appointed appellate counsel to represent him. Appointed counsel filed a brief in which no issues were raised. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Defendant filed a supplemental brief<sup>1</sup> with this court, raising a number of issues, such as the sufficiency of the evidence, instructional error based on defendant’s mental health, ineffective assistance of counsel, and the prejudicial impact of late discovery.

Defendant has not raised any arguable appellate issues. His claims of error are not supported by any legal analysis. “Where a point is raised in an appellate brief without argument or legal support, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ [Citation.]” (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1143.) Defendant’s failure to provide legal argument or authority forfeits these issues on appeal. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029; *People v. Meyer* (1963) 216 Cal.App.2d 618, 635.)

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<sup>1</sup> The supplemental brief was drafted by defendant’s cellmate, who explained that he “went through” the transcripts with defendant, who is illiterate.

Notwithstanding defendant's failure to support the assertions in his supplemental brief, we have examined the entire record, and are satisfied that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra* 25 Cal.3d 436.) There was ample evidence in support of defendant's conviction. (*People v. Diaz* (1992) 3 Cal.4th 495, 541; *People v. Palma* (1995) 40 Cal.App.4th 1559, 1567.) Moreover, we can discern no ineffective assistance of counsel on the record before us. (*People v. Mitchell* (2008) 164 Cal.App.4th 442, 467; see also *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Concerning defendant's claim that he was prejudiced by untimely discovery, we can discern no prejudice, because defendant received an instruction about late discovery. (*People v. Verdugo* (2010) 50 Cal.4th 263, 279-280.) Further, defendant never requested an instruction concerning his mental state, and there was absolutely no evidence that his mental health played any part in this crime. (*People v. Saille* (1991) 54 Cal.3d 1103, 1118-1119 [the court has no sua sponte duty to instruct on mental impairment as a defense to specific intent or mental state].)

We therefore affirm the judgment below.

#### **DISPOSITION**

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.