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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DORIS HARTFIELD,

Defendant and Appellant.

B277344

(Los Angeles County
Super. Ct. No. TA139334)

APPEAL from a judgment of the Superior Court of
Los Angeles County. John J. Lonergan, Jr., Judge. Affirmed.

Kent D. Young, under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, and Mary Sanchez, Deputy Attorney General,
for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney's Office, defendant and appellant Doris Hartfield was charged with two counts: (1) first degree residential burglary in violation of Penal Code section 459,¹ and (2) petty theft in violation of sections 484, subdivision (a), and 490.2. It was further alleged as to both counts that defendant had been convicted of a serious or violent felony within the meaning of section 667, subdivision (d), and section 1170.12, subdivision (b). It was further alleged as to count 1 that defendant had served nine prison terms within the meaning of section 667.5, subdivision (b), and that defendant had been convicted of a serious felony within the meaning of section 667, subdivision (a)(1).

Defendant pleaded not guilty and denied the special allegations. On the People's motion, count 2 was dismissed. The trial court bifurcated the trial on the issue of defendant's priors. Defendant waived her right to a jury trial and agreed to a court trial on her prior conviction allegations.

A jury found defendant guilty of first degree residential burglary. Defendant admitted her prior serious felony and "strike" conviction. The People chose not to proceed on the nine prior section 667.5, subdivision (b), allegations. Pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, the trial court struck defendant's prior "strike" conviction. Defendant was sentenced to seven years in state prison, consisting of the low term of two years for the burglary offense and five years pursuant to section 667, subdivision (a)(1).

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Defendant timely filed a notice of appeal, arguing that her sentence must be vacated because the trial court failed to advise her of rights pursuant to *In re Yurko* (1974) 10 Cal.3d 857 (*Yurko*).

We affirm.

PROCEDURAL BACKGROUND

Before jury selection, the trial court granted the defense motion to bifurcate the trial on the issue of defendant's priors. On May 26, 2016, after the jury was dismissed to begin its deliberations, the trial court noted that it needed to address defendant's priors. Defendant and her counsel conferred and then counsel stated that defendant would "waive her right to a trial." The trial court then "explain[ed] for the record. [¶]

"[Defendant], the People have alleged you suffered a prior strike conviction in 2011. That[s] the 211. Then there was I believe nine including the 211—there [were] eight other priors alleged as far as the information sheet.

"You do have a right to have this same jury make their finding on whether or not the People have proved beyond a reasonable doubt that you have been convicted of these charges and you have a right because those priors could enhance any future sentence should you be convicted on count 1 here. They only become relevant should you be convicted. If you are acquitted or if there's a hung jury, then it's not relevant. It's only relevant should you be convicted. Then you would have a right to have this same jury that just convicted you sit as the trier of fact and decide whether or not the People have proved you have suffered those priors. The People usually prove it by what they call a 969(B) packet and other documentation.

“And I know you’ve had a chance to talk to [your attorney]. It’s my understanding that you would waive your right to have this jury make that decision. If you are convicted, then we could set a court trial up. The court could either be the trier of fact on that immediately after the verdict or we can set a future date at whatever your attorney requests for that. Then ultimately I would decide instead of this jury.

“Do you agree to waive your right to have the jury decide your priors should it become relevant and allow the court to do a court trial?”

Defendant and her attorney then conferred, and defendant responded “Yeah.”

Later, the jury returned a verdict of guilty. Defense counsel requested that sentencing be set for June 9, 2016. The trial court agreed and also set the trial on defendant’s priors for that day. The trial court then stated in open court, out of the presence of the jury: “[Prosecutor], if you could be prepared. I don’t know if you have to subpoena any sort of witnesses or you certainly can at your convenience and [defense counsel’s] convenience provide him with the 969(B) packet and any other documentation. And we’ll either have a court trial with witnesses or there will be a stipulation, but we’ll handle that on June 9th also.”

On June 9, 2016, the matter was continued to July 7, 2016.

At the July 7, 2016, hearing, the matter was called, and the following discussion occurred:

“[THE COURT]: So as far as the priors trial, People, how are you going to proceed?”

“[THE PROSECUTOR]: I’ve been told by the defense attorney that they are prepared to admit. [¶] May I take the admission, your Honor?

“[THE COURT]: Yes.

“[THE PROSECUTOR]: [Defendant], you’ve been convicted in count 1 by the jury. As to count 1, there is an allegation that you suffered a prior conviction within the meaning of 667(d) and 1170.12(B) as well as 667(B) through (J) and 1170.12. And that conviction is in case number TA113338 for Penal Code section 211 otherwise known as robbery, a felony, conviction date May 20th, 2011, in the Los Angeles Superior Court. [¶] Do you admit or deny that prior conviction?”

After a conference between defendant and her attorney, defendant admitted the prior conviction.

The colloquy then continued:

“[THE PROSECUTOR]: And do you also admit that same case number, charge and conviction within the meaning of Penal Code section 667(A)(1)? Do you admit or deny?

“[DEFENDANT]: Yes, I admit.

“[THE PROSECUTOR]: Does counsel concur in the admission, stipulate to a factual basis?

“[DEFENSE COUNSEL]: Yes.

“[THE PROSECUTOR]: The People join, your Honor.”

The trial court then proceeded with sentencing. The People requested a nine-year sentence. Defense counsel requested probation; alternatively, defense counsel asked the trial court to strike the prior strikes and be sentenced to the low term without the prior strike that had been alleged and that defendant admitted. The trial court declined to grant probation because “[defendant] is beyond that. I don’t think it’s the system that

failed her. I think she failed herself by continuing to commit crimes even though she has been incarcerated and convicted a number of times and nothing seems to have worked.

“However, based on the factors that [defense counsel] indicated, the court has considered those in mitigation and, therefore, based on my knowledge of the facts of this case and hearing of the facts of her strike conviction, the court for sentencing purposes is going to strike the strike and I’m going to sentence her to the low term of two years striking the strike so it will not be doubled and then the five-year prior adds five years for seven years.

“That is the lowest I could come up with. If legally I could give a lower sentence, then I would but that is legally the lowest sentence I can give and I’m doing that by striking the strike and I’m also going to stay the nine one-year priors. Again, that’s the lowest sentence I feel I can give legally without giving her a probationary sentence, but she is beyond probation because she continues to violate the law.”

DISCUSSION

Before a defendant admits the truth of a prior conviction allegation, the trial court must ensure that the defendant is advised of and waives her constitutional rights, including the right to a jury trial, the right to confront and cross-examine witnesses, and the privilege against self-incrimination, known as the “*Boykin-Tahl*”² advisements. (*People v. Mosby* (2004) 33 Cal.4th 353, 359–360 (*Mosby*); *Yurko, supra*, 10 Cal.3d at pp. 861–863.) The trial court must also advise the defendant of

² *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122.

the penal consequences of her admission. (*Yurko, supra*, at pp. 864–865.)

When reviewing a claim of *Yurko* error, the inquiry is not whether the trial court expressly advised and obtained waiver of all three *Boykin-Tahl* rights, but rather whether “the record affirmatively shows that [the admission was] voluntary and intelligent under the *totality of the circumstances*.” (*Mosby, supra*, 33 Cal.4th at p. 360; *People v. Howard* (1992) 1 Cal.4th 1132, 1175.) “[I]f the transcript does not reveal completed advisements and waivers, the reviewing court must examine the record of ‘the entire proceeding’ to assess whether the defendant’s admission of the prior conviction was intelligent and voluntary in light of the totality of circumstances.” (*Mosby, supra*, at p. 361.)

Considering the record in its entirety here, defendant voluntarily and intelligently admitted the prior conviction allegation. Although the trial court did not advise her of her right to jury trial, the right to confront witnesses, and her right to remain silent at the time of the admission, she was advised of and waived her right to a jury trial before she admitted, and she participated in a trial where she exercised her right to confront witnesses and remain silent a mere six weeks earlier. (*Mosby, supra*, 33 Cal.4th at p. 364.) Moreover, after the trial court set a date for her priors court trial, the trial court referred to a subpoena for witnesses, in open court, and instructed the prosecutor to provide all documentation to defense counsel. Thus, defendant was aware that the prosecution could call witnesses and present supporting documentation; it follows that she would have understood that she had the right to confront witnesses and remain silent. Last, and significantly, the

admission was made after defendant consulted with her trial counsel.

Defendant's reliance upon *People v. Lloyd* (2015) 236 Cal.App.4th 49 is misplaced. In that case, the court declined to find that an admission made seven months after trial reflected knowledge of the specified constitutional rights where nothing else supported a conclusion that the defendant was intimately familiar with them. (*Id.* at pp. 59–60.) In contrast, in this case, defendant's admission did not occur “well after her jury trial.” Rather, only six weeks lapsed between the time the jury returned a guilty verdict (May 26, 2016) and the date of the court trial (July 7, 2016) on her priors.

Furthermore, in this case the record is more than sufficient to establish defendant's familiarity with her rights. A defendant's prior experience with the criminal justice system may be considered in determining a defendant's legal sophistication. (*Mosby, supra*, 33 Cal.4th at p. 365.)

Citing *People v. Cross* (2015) 61 Cal.4th 164, 170–171 (*Cross*), defendant also objects on the grounds that she was never advised of “the precise increase in the prison term that might be imposed, the effect on parole eligibility, and the possibility of being adjudged a habitual criminal.” Preliminarily, by failing to object at the sentencing hearing on this ground, defendant has forfeited this challenge on appeal. (*People v. Wrice* (1995) 38 Cal.App.4th 767, 770–771 [“when the only error is a failure to advise of the penal consequences, the error is waived if not raised at or before sentencing”].)

Setting that procedural issue aside, while defendant was not told the exact increase in prison term that could have been imposed, the trial court did expressly advise her that the priors

could enhance any future sentence. And, her attorney so recognized when he asked that defendant be sentenced to the low term without the prior strike; why else would counsel have asked for defendant to be sentenced without the prior strike? Further, as stated above, defendant is experienced with the penal system. (*Cross, supra*, 61 Cal.4th at p. 180 [previous experience in the criminal justice system is relevant to recidivist's knowledge and sophistication regarding his or her legal rights and thus relevant to whether the plea was voluntary and intelligent].) And, the admission was made after consultation with her attorney.

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT