

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

ERICK ANTON,

Defendant and Appellant.

B284084

(Los Angeles County
Super. Ct. No. MA069329)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher Estes, Judge. Affirmed.

Tyrone A. Sandoval, 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, Assistant Attorney General, Shawn McGahey Webb and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Erick Anton appeals from his conviction, after jury trial, of possession of a firearm by a felon. (Pen. Code, § 29800, subd. (a)(1).) He contends the trial court erred in permitting his counsel to concede, in argument to the jury, his guilt of the offense, without providing the necessary advisements and waivers for a guilty plea. Concluding no advisements or waivers were necessary, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Underlying Facts

On August 17, 2016, law enforcement executed a search warrant at a house in Lancaster owned by Jill Giles. When the deputies arrived, there were four people at the residence, including defendant. Defendant was asleep on a bed in a bedroom; Giles's sister was in the room with him, behind the door, looking at her phone.

Defendant was handcuffed and escorted outside. Deputy Michael Gelardo searched him and recovered a loaded semiautomatic Glock firearm from defendant's sweatshirt pocket.

Deputies searched the bedroom where defendant had been sleeping. In the bedroom, and in a locked safe found in the bedroom, deputies recovered multiple containers of methamphetamine, 10 tablets of dihydrocodeinone, 106 tablets of oxycodone, and 17 tablets of clonazepam. They also recovered two additional firearms, and a bag containing ammunition of various calibers. The deputies also found evidence that the drugs were possessed for sale, including scales, baggies, a police scanner, two cell phones, and large quantities of cash.

2. The Charges

On September 27, 2016, defendant was charged by information with one count each of possession for sale of four

different drugs – dihydrocodeinone (Health & Saf. Code, § 11351), oxycodone (*ibid.*), methamphetamine (Health & Saf. Code, § 11378), and clonazepam (Health & Saf. Code, § 11375, subd. (b)(1)). He was charged with three counts of felon in possession of a firearm (one for each of the three firearms), and one count of felon in possession of ammunition (Pen. Code, § 30305, subd. (a)(1)). It was further alleged that he had suffered a prior conviction within the meaning of the three strikes law (Pen. Code, § 1170.12) and had suffered a prior prison term (Pen. Code, § 667.5, subd. (b)).

Defendant entered a plea of not guilty and proceeded to jury trial.

3. *The Trial*

Prior to trial, defendant admitted his prior conviction, within the meaning of the felon in possession charges, the three strikes law, and the prior prison term enhancement. There is no question raised regarding the propriety of the advisements and waivers associated with this admission. The jury was informed, by stipulation, that defendant had been convicted of a felony.

At trial, the prosecution introduced evidence of the search. As to the issue of defendant's possession of the items found in the bedroom, the prosecution introduced the testimony of Detective Joshua Raniag. Detective Raniag questioned defendant at the scene; he did not record the conversation. Detective Raniag testified that defendant admitted that everything in the room and the safe belonged to him. However, Detective Raniag also testified that he made an error in his report recounting defendant's statements. The detective had written in his report that defendant admitted that he possessed the drugs for the purpose of sale; this was a mistake. Defendant had made no such

admission, and the detective erred (a “cut-and-paste mistake”) in putting it in his report. Defense counsel used this mistake to raise doubts regarding the credibility of defendant’s entire statement as reported by Detective Raniag.

Defendant offered no evidence in defense. In argument to the jury, his counsel admitted defendant was guilty of possession of the Glock, which had been found on his person by Deputy Gelardo, but argued a reasonable doubt existed that he had possessed any of the items in the bedroom which Detective Raniag testified defendant had admitted to possessing.

The strategy worked. The jury found defendant guilty of possession, by a felon, of the single firearm, and found him not guilty of all other charges.

4. *Sentencing and Appeal*

Defendant was sentenced to seven years in prison, calculated as the upper term of three years, doubled for the strike, plus an additional year for the prior prison term.

Defendant filed a timely notice of appeal.

DISCUSSION

On appeal, defendant contends his counsel’s concession, at argument, that he was guilty of the single count of firearm possession, was tantamount to a guilty plea. As such, he argues, the court was required to advise him, and obtain his personal waiver, of his constitutional rights to silence, confrontation and cross-examination, and jury trial.

The law is otherwise. An attorney’s concession of guilt at argument is not the functional equivalent of a guilty plea, and no advisements or waivers are required. (*People v. Cain* (1995) 10 Cal.4th 1, 30; *People v. Griffin* (1988) 46 Cal.3d 1011, 1029.) However, the decision to concede guilt is so fundamental,

counsel's tactical decision may not override a defendant's express desire to present a defense. (*People v. Frierson* (1985) 39 Cal.3d 803, 815.) This does not require a court to affirmatively inquire of a defendant if he agrees with counsel's decision to concede guilt; instead, the court need intervene only when the record expressly reflects a conflict between the defendant and his counsel on the issue. (*Id.* at p. 818, fn. 8.)

For the first time in his reply brief, defendant argues that the court was, in fact, required to inquire as to whether he agreed with his counsel's decision, because the record expressly reflected his disagreement.¹ Specifically, defendant claims that, after the prosecution rested, he "asserted his wish to contest Count 5" – the possession of the Glock. The record does not support this assertion. After the prosecution rested, the court allowed defendant to speak with counsel to confer regarding whether defendant wished to testify or remain silent. Upon their return, defendant stated that he did not wish to testify and confirmed that this was his decision of his own free will. The court then asked defense counsel if he intended to call any witness; counsel

¹ In his opening brief on appeal, defendant did not acknowledge the controlling authority holding that concessions in argument are not equivalent to guilty pleas. Instead, defendant relied on authority regarding when a stipulation is tantamount to a guilty plea. (E.g., *People v. Little* (2004) 115 Cal.App.5th 766, 772-773.) In its respondent's brief, the Attorney General raised the California Supreme Court case law holding that a concession in argument is not the same as a guilty plea. Defendant then argued for the first time, in reply, that this was a case in which further inquiry was required because he had expressly disagreed with his counsel's strategy. The claim is forfeited by defendant's failure to raise it earlier. (*People v. Becker* (2010) 183 Cal.App.4th 1151, 1156.) Nonetheless, we briefly address it.

stated he did not. There is nothing in this routine exchange indicating defendant had any disagreement with counsel's decision to concede guilt on a single count of possession of a firearm as part of a strategy to contest possession on seven other counts. The court had no duty to inquire.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GOODMAN, J.*

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