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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID CLIFTON SOLOMON,

Defendant and Appellant.

B239676

(Los Angeles County  
Super. Ct. No. YA081736)

APPEAL from an order of the Superior Court of Los Angeles County. Eric C. Taylor, Judge. Affirmed.

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David Clifton Solomon, in pro. per., and Kevin Michele Finkelstein, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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An information, dated August 22, 2011 and amended by interlineation on October 11, 2011, charged David Clifton Solomon with robbery (Pen. Code § 211)<sup>1</sup> and petty theft with prior petty theft convictions (§ 666). The information specially alleged that Solomon had used a dangerous or deadly weapon, a box cutter, within the meaning of section 12022, subdivision (b), while committing the offenses. It also specially alleged that Solomon had a prior serious or violent felony conviction that qualified as a strike under the “Three Strikes” law and a prior serious felony conviction pursuant to section 667, subdivision (a)(1), and had served four prior prison terms within the meaning of section 667.5, subdivision (b). According to evidence presented at the preliminary hearing, the charges related to an incident on July 16, 2011, in which Solomon removed a case of ramen noodles as it was being unloaded from the car of a liquor store owner and did not pay for it. When approached by the owner, Solomon pulled out a box cutter and told the owner that he was taking the case of noodles. On October 3, Solomon waived his right to counsel, and the trial court granted him pro. per. status. On October 11, Solomon pleaded no contest to the charge under section 666. The court imposed the upper-term sentence of three years in state prison, suspended execution of sentence and placed Solomon on formal probation for three years. Among the conditions of probation, the court ordered that Solomon serve one year in county jail and obey all laws. The court dismissed the robbery count and the special allegations.

After his release from jail, Solomon was arrested on December 9. The trial court remanded Solomon to custody and set a formal probation violation hearing for January 17, 2012. At the hearing, before the presentation of evidence, the court granted Solomon’s motion to be relieved of counsel and to represent himself. The court denied Solomon’s motion to continue the probation violation hearing. The People then presented evidence that, on December 9, 2011, Soowook Shim, the owner of a liquor store, saw Solomon about 8:30 a.m. in the vicinity of the liquor store exiting a bus. Solomon, who was uttering curse words, entered Shim’s store, and Shim followed

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<sup>1</sup> Statutory references are to the Penal Code.

Solomon inside the store and went behind the counter. Solomon asked Shim to check the balance on Solomon's food stamp card. Shim told Solomon to swipe the card and enter his personal identification number. Solomon did this twice, and each time Shim received a "denied" code, telling him that the personal identification number entered by Solomon was the incorrect one for the card. When Shim told Solomon that the status was "denied," Solomon pounded on the counter with an open hand, raised his voice and cursed. He then punched Shim in the face with his right hand. As Shim moved away from the counter, Solomon lunged over the counter. Shim retrieved pepper spray that he kept by the door and sprayed Solomon, who then jumped on Shim. Shim sprayed Solomon again. Solomon left the store, and Shim attempted to spray him again. Solomon came back inside the store and lunged at Shim with his fists, as if trying to punch Shim. Shim fell down, and Solomon left the store. After going behind the counter and pressing the panic button, Shim went outside the store and heard Solomon say, "I have a knife. I'll come back and kill you." Shim did not see Solomon leave the store with any items other than Solomon's own bag.

The following day, January 18, Solomon represented to the court that he intended to put on witnesses in defense and needed about 10 days to prepare. The court continued the matter to January 30.

On January 30, Solomon did not present any witnesses other than himself in defense. He introduced cash and his checkbook, which were on his person at the time of the incident with Shim. He and the trial court reviewed the surveillance videotape depicting the incident. Solomon maintained that no evidence suggested he had attempted to rob Shim and that his card, which was not for food stamps but other benefits, was in working order, although Shim reported receiving a "denied" code. Solomon argued that his acts against Shim were in self-defense because "Shim became frustrated, presumptuous, combative and threatened [him] with bodily harm by brandishing a bottle of mace before [Shim] left from behind the counter to come after [him] with the bottle, and [Shim] did spray [him] profusely and would not stop and [Shim] was trying to prevent [him] from exiting the store." Solomon also asserted that, although on the

videotape it appeared as though he had punched Shim, his hand did not connect with Shim's face.

Based on the evidence, the trial court found that Solomon had violated probation by failing to obey all laws. The court revoked probation, lifted the suspension on the execution of sentence and ordered Solomon to serve the previously imposed three-year sentence. Solomon filed a notice of appeal.

We appointed counsel to represent Solomon in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

On August 6, 2012, we directed appointed counsel to immediately send the record on this appeal and a copy of the opening brief to Solomon and notified Solomon that within 30 days from the date of the notice he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider. Solomon filed a letter response on September 10, 2012.

In his letter, Solomon contends that his sentence should be served in county jail, not state prison, because he does not have a prior robbery conviction or “2 strikes.” Although the record contains references to Solomon serving his sentence in county jail, rather than in state prison, the record is not clear on the status of Solomon's criminal history or the reason for his current placement. As a result, the record provides no basis to reverse the order based on Solomon's current placement.

Solomon also contends that he did not receive effective assistance of counsel and the opportunity to represent himself in pro. per. because the trial court refused to continue the probation violation hearing so that he could prepare properly. On the day of the scheduled probation violation hearing, January 17, 2012, Solomon asked to represent himself, and the court, after advising Solomon against self-representation, granted Solomon pro. per. status on his repeated request. Defense counsel prepared to provide Solomon with discovery. Solomon then asked for a continuance of the probation violation hearing because he had not “had a chance to visit the law library to prepare. Like I said, no written discovery whatsoever.” The court responded, “I indicated to you

that you were here mid-December. You had notice of this. You are asking to go pro per now and there's a witness who's already in the courtroom who's been here all morning. Your request for a continuance is denied. If you wanted to go pro per, you could have asked for that before." The trial court did not abuse its discretion by denying a continuance. (*People v. Beames* (2007) 40 Cal.4th 907, 920 ["decision whether or not to grant a continuance of a matter rests within the sound discretion of the trial court"].) Solomon knew about the January 17, 2012 probation violation hearing no later than December 15, 2011, giving him more than a month's notice of the hearing. And he presented no specific grounds for a continuance, other than generally stating he needed time to prepare. Regardless, Solomon in effect received a continuance because, after the People had presented their case, the court granted him a continuance, as he had requested, until January 30, to present his defense. Despite this extra time, Solomon presented no witnesses other than himself at the January 30 hearing. Thus, the denial of a continuance on January 17 could not have prejudiced Solomon. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1126 [denial of a motion for continuance does not warrant reversal absent a showing of prejudice].)

To the extent Solomon also argues that, on January 30, he was entitled to a further continuance, he is incorrect. As noted, at the January 18 hearing, Solomon said he needed 10 days to prepare his case and witnesses, and the court continued the probation violation hearing to January 30. On January 30, Solomon did not present witnesses, aside from his own testimony. Yet, Solomon maintained he needed a further continuance to obtain a transcript of Shim's testimony from another hearing, which he said differed from the testimony Shim had given on January 17 at the probation violation hearing. Although the court did not further continue the matter, it told Solomon that it would consider the evidence as if Shim had testified at the other hearing as represented by Solomon. The court thus was well within its discretion to deny a further continuance, and, in any case, the ruling did not prejudice Solomon.

Finally, Solomon complains about lack of notice or a probation officer's report. The record does not reveal what Solomon's issues may be with respect to lack of notice

or a probation officer's report. A probation officer's report was prepared before imposition of his suspended sentence and probation, and the trial court, in sentencing Solomon in connection with the probation violation, lifted the suspension of the execution of that sentence. Thus, Solomon has presented no basis for reversal of the order based on lack of notice or a probation officer's report.

In addition to addressing the issues raised by Solomon in his letter, we have examined the entire record and determined that substantial evidence supports the trial court's decision to revoke probation. We may not reweigh that evidence. We are satisfied that Solomon's appointed counsel has fully complied with counsel's responsibilities and that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

#### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.