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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.

USBALDO CARRILLO,

Defendant and Appellant.

B244582

(Los Angeles County
Super. Ct. No. BA386880)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Affirmed.

Stanley Dale Radtke, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury found appellant guilty of being a felon in possession of a firearm (Pen. Code,¹ § 12021, subd. (a)(1)). Following a subsequent court trial, the allegations that appellant had a prior conviction within the meaning of the Three Strikes law (§ 1170.12, subds. (a)-(d)) and three prior convictions pursuant to section 667.5, subdivision (b) to be true. Appellant was sentenced to six years in state prison.

I. FACTS

Two Los Angeles Police officers observed appellant standing near an apartment complex holding what appeared to be a shotgun covered in a black jacket. A foot-chase ensued through the apartment complex during which the officers observed appellant throw the shotgun in a dumpster. The shotgun was recovered and was loaded. The parties stipulated he was a convicted felon.

II. DISCUSSION

The court appointed counsel to represent appellant on appeal. On May 2, 2013, appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues but requesting this court to independently review the record for arguable issues and review the in camera hearing conducted pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). On June 5, 2013, appellant filed a document that we treat as a supplemental brief.² In that document, appellant appears to request his sentence be reduced and claims there was insufficient evidence to support the jury's verdict.

¹ All future statutory references are to the Penal Code.

² Appellant was informed of his right to file a supplemental brief within 30 days of the filing of his counsel's brief. Appellant's document was filed two days late. Nonetheless, we exercise our discretion to consider his claims.

A. *Pitchess* Review

In response to appellant's *Pitchess* motion, the trial court found the defense was entitled to an in camera hearing to review any civilian complaints in the arresting officers' personnel record that alleged the officers engaged in acts of "dishonesty." After conducting the review, the trial court found no discoverable information.

The mechanics of a *Pitchess* motion are well-established. "[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] Good cause for discovery exists when the defendant shows both "materiality" to the subject matter of the pending litigation and a "reasonable belief" that the agency has the type of information sought." [Citation.] . . . If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations [citation], 'the trial court should then disclose to the defendant "such information [that] is relevant to the subject matter involved in the pending litigation.'" [Citations.]" (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

We have reviewed all material in the record regarding the *Pitchess* motion, including the moving papers and the sealed transcripts of the in camera proceeding. Those records are sufficient for us to conduct our independent review. (*People v. Myers* (2007) 148 Cal.App.4th 546, 553.) We have found no abuse of discretion committed by the trial court. (*Ibid.*, citing *People v. Mooc* (2001) 26 Cal.4th 1216, 1228.)

B. Sufficiency of the Evidence

"In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we 'examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the

defendant guilty beyond a reasonable doubt.’ [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.)

Two police officers testified they observed appellant with a shotgun and then throw it in a dumpster. We cannot reweigh the credibility of the officers. (*People v. Guerra, supra*, 37 Cal.4th at p. 1129.) Their testimony, in combination with the parties’ stipulation that that appellant was a convicted felon, is sufficient to support jury’s verdict. (*Ibid.*; see § 12021, subd. (a)(1).)

C. The Sentence

The trial court selected the middle term of two years for the underlying offense and doubled that term under the “Three Strikes” law. The court added two one-year terms pursuant to section 667.5.³ It appears appellant contends in his supplemental brief that the trial court imposed too long a sentence and should have granted his motion to dismiss the prior conviction alleged under the Three Strikes law.

In ruling on a motion to dismiss a prior conviction found true under the Three Strikes law, the trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The court’s denial of such a motion is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) “‘The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary’ [Citation.]” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

³ One of the prior convictions found true under section 667.5 was dismissed.

In denying appellant’s motion, the court cited the seriousness of the prior conviction for robbery, the fact that the 1991 robbery “was not that old,” and the aggravated nature of the current offense, i.e., appellant possessed a loaded shotgun “in an apartment complex where people are living.” The ruling was not arbitrary or irrational. The court did not abuse its discretion.

D. *Wende* Review

We have independently examined the entire record on appeal. There are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 284.)

III. DISPOSITION

The judgment is affirmed.

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KUMAR, J. *

We concur:

MOSK, Acting P.J.

KRIEGLER, J.

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