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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.

CLAUDIA MEDINA,

Defendant and Appellant.

B236624

(Los Angeles County  
Super. Ct. No. LA067691)

THE COURT:\*

Claudia Medina appeals from the judgment entered upon her conviction by jury of second degree robbery. (Pen. Code, § 211.)<sup>1</sup> The trial court found to be true the allegations that appellant had suffered a prior felony strike (§§ 1170.2, subds. (a)-(d), 667, subds. (b)-(i)), and a prior serious felony (§ 667, subd. (a)(1)). The trial court sentenced appellant to 15 years in state prison, consisting of the upper term of five years, doubled as a second strike, plus the five-year serious felony enhancement. The trial court struck the two prior prison term enhancements.

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\* DOI TODD, Acting P. J., ASHMANN-GERST, J., CHAVEZ, J.

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

The convictions in this case arose from the following facts:

On April 16, 2011, 15-year-old Clarisa E. (Clarisa) was selling fruit from her family's roadside stand on Laurel Canyon Boulevard in Studio City. Near 6:00 p.m., a white car stopped in front of the stand, and appellant got out of the car from the driver's side. She approached the stand and told Clarisa to hand over the money. Appellant held something wrapped in a blue and white striped shirt, which Clarisa believed was the tip of a gun. Frightened, Clarisa gave appellant approximately \$200 that was in her pocket. Appellant returned to the car and sped away. Clarisa later identified appellant as the robber in a photographic six-pack and at the preliminary hearing.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an "Opening Brief" in which no issues were raised. On May 30, 2012, we advised appellant that she had 30 days within which to personally submit any contentions or issues which she wished us to consider.

On July 23, 2012, a letter brief from appellant to this court was filed by her appellate attorney. Appellant's letter brief contends that (1) she suffered ineffective assistance of counsel because her attorney failed to (a) make a *Romero*<sup>2</sup> motion regarding her prior convictions which were eight years old, the result of a plea, and for which she had "served [her] time," (b) investigate alibi information she provided to him that she was at a liquor store when the robbery happened, as reflected in a store video recording, (c) present evidence that the victim improperly identified appellant, (d) present a two-year offer to the district attorney as requested by appellant, and (e) call witnesses appellant requested, (2) the prosecution witness changed her testimony from the statements she had given, (3) appellant was misidentified, and one witness did not notice her very noticeable tattoos, and (4) she was prejudiced by the jury seeing her shackled and her orange jumpsuit, "portraying [her] to be a dangerous criminal."

We begin by observing that appellant's contentions are without references to the record on appeal and without citation of authority. Points asserted on appeal without

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<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

authority, citations to the record or argument may be treated as forfeited and passed on without being considered. (*People v. Wilkinson* (2004) 33 Cal.4th 821, 846, fn. 9; *People v. Stanley* (1995) 10 Cal.4th 764, 793; *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1024.) In any event, appellant's contentions are without merit.

Appellant's ineffective assistance of counsel claims are rejected (claim Nos. 1 (a)-(e), above). "“Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a ‘strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.’” [Citation.] “[W]e accord great deference to counsel's tactical decisions” [citation], and we have explained that “courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight” [citation]. “Tactical errors are generally not deemed reversible, and counsel's decision-making must be evaluated in the context of the available facts.””” (*People v. Jones* (2003) 29 Cal.4th 1229, 1254.) Decisions not to call certain witnesses are peculiarly matters of trial tactics. (*People v. Bolin* (1998) 18 Cal.4th 297, 334.)

We will indulge in a “strong presumption” that counsel's performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy. (*Strickland v. Washington* (1984) 466 U.S. 668, 689; *In re Andrews* (2002) 28 Cal.4th 1234, 1253.) If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.) In such circumstances, a claim of ineffective assistance of counsel is more appropriately made in a petition for writ of habeas corpus. (*People v. Visciotti* (1992) 2 Cal.4th 1, 47, fn. 17.)

Here, the record fails to indicate the reasons for counsel's challenged actions or omissions. The record also fails to indicate that a request was made of counsel for an explanation of reasons for the challenged actions and omissions, and those actions and

omissions do not appear to be such that no satisfactory explanation could be given. Hence, we reject this contention on the ground that there is no showing that counsel's actions were deficient. Furthermore, these claims are more appropriately brought in a petition for writ of habeas corpus.

We also reject appellant's claim that she was prejudiced by being in court in shackles and prison garb (claim No. 4, above). Appellant fails to refer to any portion of the record, nor have we found any, wherein any objection was made to her wearing prison clothes or being shackled. Had she promptly brought this concern to the trial court's attention, it might have been able to take corrective action, if necessary, such as, for example, instructing the jury not to consider appellant's restraints. Appellant's delay precluded any ameliorating action. The failure to object to the physical restraint procedure in the trial court bars appellate review. (See *People v. Marks* (2003) 31 Cal.4th 197, 224.) An objection in the trial court must be timely to preserve the issue for appeal. (*People v. Ray* (1967) 252 Cal.App.2d 932, 975.)

Even if appellant had not forfeited this claim, it is nonetheless without merit. The trial court offered appellant the opportunity to wear civilian clothes. We have been pointed to no portion of the record where there is any indication of why, or if, she failed to do so. Further the record provides no evidence of whether the shackles were visible to the jury at any time or if any prejudice resulted from their use.

Moreover, section 688 provides: "No person charged with a public offense may be subjected, before conviction, *to any more restraint than is necessary for his detention to answer the charge.*" (Italics added.) Appellant was accused of a serious crime. There was discussion that appellant had been in a physical altercation with prison staff and extra sheriff's deputies were in the courtroom because of the risk that appellant posed. Thus, she presented a serious risk to court personnel. In *People v. Duran* (1976) 16 Cal.3d 282 (*Duran*), the California Supreme Court held that "a defendant cannot be subjected to physical restraints of any kind in the courtroom while in the jury's presence, *unless there is a showing of a manifest need for such restraints. . . .*" (*Id.* at pp. 290–291; italics added.)

Appellant's claim Nos. 2 and 3, above, are also without merit. Even if the prosecution witness's testimony deviated from her prior statements, and even if the identification evidence was imperfect, we perceive no grounds to overturn the verdict. These facts were before the jury, which evaluated any discrepancies in identifying appellant and contradictions in the witnesses' testimony. It was for the jury to make that determination.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order under review is affirmed.

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