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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.

DEANDRE JERROD BROWN,

Defendant and Appellant.

B249594

(Los Angeles County
Super. Ct. No. BA393566)

APPEAL from a judgment of the Superior Court of Los Angeles County. Drew E. Edwards, Judge. Affirmed with modifications.

Landra E. Rosenthal, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Eric E. Reynolds, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Deandre Jerrod Brown (“Brown”) appeals the nine year and four month sentence imposed for his convictions of first-degree burglary (Pen. Code, § 459),¹ and assault with a stun gun or taser (§ 244.5, subd. (b)). We modify the sentence to eight years, and otherwise affirm.

FACTS AND PROCEDURAL HISTORY

Brown knocked at the front door of the home of Yaniv Amar (“Amar”) and Rinat Baranes (“Baranes”), forced his way inside, and proceeded to attack Amar with a taser and then his fists. Brown fled after Baranes stabbed him in the back with a kitchen knife. Brown left his fingerprints and DNA at the scene; the assault was caught on video; and Brown confessed.

The People charged Brown with first-degree burglary and with assault with a stun gun or taser; the information further alleged that the robbery was a violent felony because someone other than an accomplice was present (§ 667.5, subd. (c)(21)). Following his conviction of both crimes by a jury, the court held a trial on Brown’s 1997 juvenile adjudication for robbery as a strike. During that trial, the court rejected Brown’s challenge to the validity of the plea underlying the juvenile adjudication, and found the prior strike allegation to be true. (§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).)

The court sentenced Brown to eight years on the robbery count—that is, four years doubled to eight years due to the prior strike. The court then imposed a consecutive 16 month term (as one-third of the middle term) for the assault. The court awarded 530 days of presentence credit.

Brown appeals three aspects of his sentence.

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

DISCUSSION

I. Multiple Punishments

Brown argues that the trial court erred in imposing a consecutive 16-month sentence on the assault count; he asserts that the assault sentence should have been stayed pursuant to section 654. The People agree, and so do we.

Section 654 prohibits a court from imposing multiple punishments where “a course of conduct . . . violates more than one statute but nevertheless constitutes an indivisible transaction.” (*People v. Hairston* (2009) 174 Cal.App.4th 231, 240.) If a defendant commits more than one offense, but “‘all the offenses were incident to one objective, the defendant may be punished for any one of such offense, but not for more than one.’” (*People v. Perez* (1979) 23 Cal.3d 545, 551 . . .).” (*People v. Wynn* (2010) 184 Cal.App.4th 1210, 1214-1215, emphasis omitted.) When a crime is the object of a simultaneously charged burglary, the two offenses are indivisible and section 654 bars multiple punishments. (See *People v. Hester* (2000) 22 Cal.4th 290, 294 [burglary and assault]; *People v. Price* (1991) 1 Cal.4th 324, 492 [burglary and murder], *superseded on other grounds*, Pen. Code, § 496, subd. (a); *People v. Le* (2006) 136 Cal.App.4th 925, 930-931 [robbery and burglary].) We review section 654 rulings under the substantial evidence test. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731.)

The record establishes that Brown’s assault was the object of the burglary. The jury was instructed that it must evaluate whether the assault was the object of the burglary, and the prosecutor argued in closing that it was. On this record, the assault sentence should have been stayed. We modify the sentence accordingly.

II. Validity of Prior Juvenile Adjudication

Brown next contends that the trial court erred in denying him an evidentiary hearing regarding the validity of his 1997 juvenile adjudication. We disagree.

In California, criminal defendants may file a motion to strike prior convictions or juvenile adjudications used to enhance a sentence on the ground that those “priors”

were premised on a defective plea. (*People v. Sumstine* (1984) 36 Cal.3d 909, 918-919 (*Sumstine*); *People v. Allen* (1999) 21 Cal.4th 424, 429.) Among other reasons, a plea is defective if the defendant does not make a knowing and intelligent waiver of his right to a jury trial, his right to confront witnesses, and his privilege against self-incrimination. (*Boykin v. Alabama* (1969) 395 U.S. 238, 243 (*Boykin*); *In re Tahl* (1969) 1 Cal.3d 122, 132 (*Tahl*).)

Before a defendant moving to strike a prior conviction is entitled to an evidentiary hearing on the issues of whether the earlier trial court did not advise him of his so-called *Boykin-Tahl* rights and whether that omission rendered his plea involuntary, (*People v. Howard* (1992) 1 Cal.4th 1132, 1175), the defendant must at a minimum allege (1) that he was not properly advised of his rights and (2) that “absent this [deficiency] [he] would not have pled guilty to the charge.” (*People v. Soto* (1996) 46 Cal.App.4th 1596, 1605-1606 (*Soto*), citation and internal quotation marks omitted.) “[I]t is not enough . . . to allege that the record of [the] prior conviction is silent regarding those rights.” (*Sumstine, supra*, 36 Cal.3d at p. 914.)

The denial of an evidentiary hearing in this case was proper for two reasons. First, Brown’s allegations were insufficient. He complains on appeal that he was not advised of his right to a court trial on the question of his guilt. However, in his submission to the trial court, Brown never stated he was unaware of *this* right or that he would not have entered his plea if he had been aware. All he alleged was a silent record; as noted above, that is not enough. Indeed, we rejected an identical claim in *People v. Brown*, B250551 (Aug. 5, 2014), where Brown challenged the use of the same juvenile adjudication to enhance his separate conviction for possessing a weapon while in custody. (Brown did claim in his trial court papers that he was not advised of other rights, but those allegations are not pressed in this appeal and these claims are in any event refuted by the juvenile court’s minute orders showing full advisements as to these other rights.)

Second, it is far from clear that a separate advisement of the right to a court trial was required in any event. A juvenile is entitled to be advised of the *Boykin-Tahl* rights, except for the right to a jury trial (which juveniles do not possess). (*In re Ronald E.* (1977) 19 Cal.3d 315, 321; *In re Steven H.* (1982) 130 Cal.App.3d 449, 452.) Although California Rule of Court 5.778 requires a juvenile to be advised of “[t]he right to a hearing by the court on the issues raised by the petition,” (Cal. R. Court. 5.778, subd. (b)(1)), Brown was in this case explicitly advised of his privilege against self-incrimination, his rights to confront and cross examine witnesses, and his right to compel the attendance of witnesses. Although these particular advisements do not, on their face, expressly “spell . . . out” the right to a court trial, they necessarily “assume[]” one; at least one court has found such advisements to be sufficient. (*In re Chadwick C.* (1982) 137 Cal.App.3d 173, 182; accord *In re James H.* (1985) 165 Cal.App.3d 911, 916-917 [advisement of “right to remain silent” sufficient to convey “privilege against self-incrimination”; precise verbiage not required].)

III. *Pre-Sentence Credits*

Brown lastly asserts that the trial court miscalculated his presentence credits by miscounting the number of days between his arraignment on March 2, 2012, and his sentencing on June 10, 2013. The People agree with Brown that he should receive 466 days of actual credit (rather than 461), along with 69 days of conduct credit. Because this issue may be raised for the first time on appeal along with other properly preserved claims, (*People v. Mendez* (1999) 19 Cal.4th 1084, 1100-1101; *People v. Acosta* (1996) 48 Cal.App.4th 411, 420-421), we order that the abstract of judgment be amended to reflect a total of 535 days of custody credit.

DISPOSITION

The judgment is modified to reflect that the 16 month sentence for assault is stayed pursuant to section 654, and that appellant is awarded 535 days presentence custody credit. The trial court is ordered to prepare and forward to California's Department of Corrections and Rehabilitation an abstract of judgment modified accordingly. In all other respects, the judgment is affirmed.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST