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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PIER'ANGELA SPACCIA,

Defendant and Appellant.

B286764

Los Angeles County
Super. Ct. No. BA376026

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

James & Associates, Becky S. James and Rachael A. Robinson for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

This is the second appeal arising from the criminal prosecution of defendant and appellant Pier'Angela Spaccia, the former assistant city manager of the City of Bell (Bell). A jury convicted Spaccia on 11 counts relating to Bell's corruption scandal, including five counts of misappropriation of public funds (Pen. Code, § 424),¹ one count of conspiracy to misappropriate public funds (§ 182, subd. (a)(1)), four counts of conflict of interest by a public official (Gov. Code, §§ 1090, 1097) and one count of secreting an official record (Gov. Code, § 6200). In addition to sentencing Spaccia to a prison term of more than 11 years, the court imposed direct victim restitution exceeding \$8 million, which award represented the inflated salaries and cashed-out benefits received by Spaccia, city manager Robert Rizzo, and police chief Randy Adams.

In the first appeal, we reversed Spaccia's convictions on the misappropriation counts due to instructional error but otherwise affirmed the judgment. (*People v. Spaccia* (2017) 12 Cal.App.5th 1278 (*Spaccia I*.) On remand, the People elected not to retry the misappropriation counts and the court resentenced Spaccia to a 10-year prison term on the remaining convictions. The court imposed the same direct victim restitution award.

Primarily, Spaccia attempts to challenge the validity of the convictions we affirmed in the first appeal—a strategy we reject as patently meritless. Spaccia also contends the court abused its discretion by imposing a direct victim restitution award because the amount of the award is based on funds misappropriated from

¹ All undesignated statutory references are to the Penal Code.

Bell but we reversed the misappropriation convictions in the prior appeal and the People did not retry her on those counts. We conclude the proven criminal conduct underlying the conspiracy and conflict of interest counts provides a sufficient basis for the direct victim restitution award. Finally, Spaccia argues that her appointed counsel in the prior appeal failed to provide effective assistance of counsel because he failed to raise several specific arguments in the first appeal. Because the arguments cited are without merit, we conclude counsel did not render ineffective assistance. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Our prior opinion provides a detailed summary of the evidence presented at trial. (*Spaccia I, supra*, 12 Cal.App.5th 1278.) In the interest of brevity, we discuss only those limited facts necessary to understand our disposition of the present appeal.

The Bell corruption scandal erupted in 2010 after it was discovered that Robert Rizzo, the longtime city manager, Spaccia, then the assistant city manager, and five city council members were receiving astronomical salaries and fringe benefits, which they had taken care to conceal from their constituents. The subsequent investigation focused in large part on Rizzo and Spaccia. Although Spaccia generally conceded she had taken certain actions, such as preparing employment contracts for herself, Rizzo, and Bell's newly-hired police chief Randy Adams, she claimed she had done so at Rizzo's direction and without knowledge of the illegality of those actions. (*Spaccia I, supra*, 12 Cal.App.5th at pp. 1296–1298.)

The financial impact of the corruption scheme was significant. Pertinent here, Spaccia's salary escalated from

\$102,310 annually in 2003 to more than \$340,000 annually in 2010. Rizzo's salary also increased substantially during the same period, rising from approximately \$250,000 annually in 2002 to more than \$700,000 annually in 2010. In addition, both Spaccia and Rizzo received excessive benefits, including sick and vacation leave, service credits, contributions to retirement programs, and "loans" from Bell that were repaid with cashed-out leave balances. Spaccia and Rizzo further collaborated to hire Adams at the exceeding high salary of \$450,000 annually. (*Spaccia I, supra*, 12 Cal.App.5th at pp. 1285–1286.)

The People charged Spaccia with 13 counts related to the Bell public corruption scandal: one count of conspiracy to misappropriate public funds in violation of section 182, subdivision (a)(1) (count 1); four counts of conflict of interest in violation of Government Code sections 1090 and 1097 (counts 2, 5, 6, and 7); six counts of misappropriation of public funds in violation of section 424, subdivision (a) (counts 3, 4, 10, 11, 12, and 13); and two counts of unlawful secretion of an official record in violation of Government Code section 6200 (counts 8 and 9). The information alleged that the losses for counts 3 through 7, and 11 through 13, exceeded \$1.3 million (§ 12022.6, subd. (a)(3)) and involved theft of more than \$100,000 (§ 1203.045, subd. (a)). (*Spaccia I, supra*, 12 Cal.App.5th at p. 1281.)

A jury acquitted Spaccia on count 8 and the court declared a mistrial as to count 11, after finding the jury was hopelessly deadlocked on that count; the court later dismissed count 11. The jury found Spaccia guilty of the remaining counts and found all allegations true. (*Spaccia I, supra*, 12 Cal.App.5th at p. 1281.)

The court sentenced Spaccia to an aggregate determinate term of 11 years and eight months. In addition to various fines

and fees, the court imposed a victim restitution order under section 1202.4, subdivision (f), in the amount of \$8,254,776. (*Spaccia I, supra*, 12 Cal.App.5th at p. 1281.) The court calculated the restitution amount based on the illegal payments made to Spaccia (\$2,155,286), Rizzo (\$5,632,450), and Adams (\$467,040).

Spaccia appealed and we reversed the five convictions for misappropriation of public funds under section 424, subdivision (a) (counts 3, 4, 10, 12 and 13) (reversed counts) due to instructional error. We also directed the court to correct the abstract of judgment in one minor respect not relevant here. We affirmed the judgment in all other respects and remanded for further proceedings. (*Spaccia I, supra*, 12 Cal.App.5th at pp. 1287–1299.)

The People elected not to retry Spaccia on the reversed counts and the court resentenced Spaccia on the remaining counts we affirmed. The court selected count 5 as the base term and imposed the upper term of three years. (Gov. Code, §§ 1090, 1097.) For counts 2, 6, and 7, the court imposed two years—one-third the midterm of two years for each count—to run consecutively. (Gov. Code, §§ 1090, 1097.) For counts 1 and 9, the court imposed an additional two years—one-third the midterm of three years on each count—to run consecutively. (§ 182, subd. (a)(1); Gov. Code, § 6200.) Finally, the court imposed an additional three years for the high-value property enhancement, to run consecutively. (§ 12022.6, subd. (a).) The court ordered Spaccia to serve her sentence in state prison. And in addition to various fines and fees, the court imposed a direct victim restitution order under section 1202.4, subdivision (f), in the amount of \$8,254,776.

Spaccia timely appeals.

DISCUSSION

1. Spaccia’s attack on the validity of the convictions we affirmed in the prior appeal is meritless.

Spaccia’s primary contention is that, on remand, the trial court should have vacated the judgment of conviction on *all* counts. She makes this argument notwithstanding the fact that our prior opinion reversed the judgment only as to the five misappropriation counts and expressly affirmed the judgment in all other respects and, further, notwithstanding the fact that she did not ask the trial court for that relief. This argument is, to put it plainly, frivolous.

In an appeal on a criminal matter, “[t]he court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.” (§ 1260.) “The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned. ‘The order of the appellate court as stated in the remittitur, “is decisive of the character of the judgment to which the appellant is entitled. The lower court cannot reopen the case on the facts, allow the filing of amended or supplemental pleadings, nor retry the case, and if it should do so, the judgment rendered thereon would be void.” ’ [Citations].” (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.)

In *Spaccia I*, we reversed the convictions on five counts of misappropriation of public funds, directed the court to correct the abstract of judgment in one minor respect, affirmed the judgment in all other respects, and remanded for further proceedings consistent with our opinion. (*Spaccia I, supra*, 12 Cal.App.5th at pp. 1298–1299.) Because our reversal of the misappropriation convictions was due to instructional error rather than insufficiency of the evidence, *Spaccia* was subject to retrial on those counts. (E.g., *People v. Hernandez* (2003) 30 Cal.4th 1, 6 [“[I]t is well established that if the defendant secures on appeal a reversal of his conviction based on trial errors other than insufficiency of evidence, he is subject to retrial”].) Thus, the “further proceedings” contemplated by our prior disposition were either a retrial on the reversed counts, at the People’s option, followed by resentencing on the affirmed counts as well as any additional counts of conviction resulting from the retrial, or dismissal of the reversed counts, at the People’s option, followed by resentencing on the affirmed counts. In no event was the trial court authorized to vacate the judgment of conviction as to those counts we expressly affirmed in *Spaccia I*. (See, e.g., *People v. Murphy* (2001) 88 Cal.App.4th 392, 396–397 [“In an appeal following a limited remand, the scope of the issues before the court is determined by the remand order”]; *People v. Senior* (1995) 33 Cal.App.4th 531, 535 [noting “California law prohibits a direct attack upon a conviction in a second appeal after a limited remand for resentencing”].) *Spaccia*’s argument to the contrary is meritless.

2. The court did not abuse its discretion in ordering direct victim restitution to the City of Bell.

Spaccia contends the trial court erred in imposing a direct victim restitution order. As noted, the victim restitution award of \$8,254,776 to Bell was calculated with reference to the excessive salaries and cashed-out benefits paid to Spaccia (\$2,155,286), Rizzo (\$5,632,450), and Adams (\$467,040). According to Spaccia, the award is improper because, in our prior opinion, we reversed the counts relating to misappropriation of public funds which supported the direct victim restitution award and the People opted not to retry her on those counts. In the absence of those convictions, she asserts, the award is erroneous.² We disagree.

Under the California Constitution and section 1202.4, every crime victim has a right to be compensated by the defendant for losses incurred as a result of the defendant's crime. (Cal. Const., art. I, § 28, subd. (b), par. (13); § 1202.4, subd. (a)(1).) The only limitation is that the victim's economic loss must be a result of the conduct underlying the crime of conviction. (See *People v. Martinez* (2017) 2 Cal.5th 1093, 1106–1107.) Thus, in making a victim restitution award, the trial court must determine whether the criminal conduct for which a defendant was convicted was the proximate cause of the economic loss claimed by the victim. (See, e.g., *People v. Foalima* (2015) 239 Cal.App.4th 1376, 1396.) “[T]he standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt.” (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.) We review a direct

² Spaccia does not challenge the amount of the direct victim restitution award.

victim restitution order for an abuse of discretion. (*Foalima*, at p. 1395.)

In making the award to Bell, the court impliedly found that the convictions affirmed in our prior decision provided a sufficient basis for the direct victim restitution award. The court did not abuse its discretion in this regard.

First, the portion of the award based on payments made to Spaccia is adequately supported by the conflict-of-interest convictions (counts 5, 6, and 7). In those counts, the jury found that Spaccia participated in making three contracts in which she had a financial interest: the second and third addenda to her initial employment contract (made in 2005 and 2006) and her 2008 employment contract. Those agreements provided, among other things, the increases in salary and benefits which led to the unlawful payments to Spaccia. (*Spaccia I, supra*, 12 Cal.App.5th at pp. 1282–1286.)

Second, the remaining portions of the direct victim restitution award are supported by the conspiracy conviction (count 1). There, the jury found that Spaccia conspired with Rizzo or another person to misappropriate public funds from Bell. The jury was not asked to make a special finding regarding the overt act taken in furtherance of the conspiracy.³ But the People

³ Spaccia appears to suggest that a conspiracy conviction should not form the basis of a direct victim restitution award unless the jury makes a special finding regarding the overt act, at least when, as here, the prosecution alleges myriad overt acts in furtherance of the conspiracy, only some of which relate to the alleged economic losses. This appears to be an issue of first impression. We do not reach that question here, however, for two reasons. First, Spaccia has not developed the argument in the slightest. For that reason alone, we may decline to address it. (See, e.g., *People v. Stanley* (1995) 10 Cal.4th

presented substantial evidence that Spaccia and Rizzo worked together over a prolonged period of time in order to divert funds from Bell to themselves and others, including Adams. Ample evidence was presented that Spaccia assisted Rizzo with the paperwork required to implement his own inflated employment agreements. She did the same for Adams and even acknowledged in writing that his salary, like hers and Rizzo's, was excessive. (*Spaccia I*, *supra*, 12 Cal.App.5th at pp. 1282–1286.)

3. Spaccia's appointed counsel did not render ineffective assistance in the first appeal.

Finally, Spaccia contends that her appointed counsel in *Spaccia I* (prior appellate counsel) failed to assert numerous arguments in the prior appeal and, as such, rendered ineffective assistance of counsel. We disagree.

“[A] criminal defendant is guaranteed the right to effective legal representation on appeal’ (*In re Sanders* [(1999)] 21 Cal.4th [697,] 715; see *In re Smith* (1970) 3 Cal.3d 192, 202–203 [‘the inexcusable failure of petitioner’s appellate counsel to raise crucial assignments of error, which arguably might have resulted in a reversal, deprived petitioner of the effective assistance of appellate counsel ...’]); to be competent, appellate counsel must ‘“prepare a legal brief containing citations to the ... appropriate authority, and set[] forth all arguable issues” ’ (*People v. Barton* (1978) 21 Cal.3d 513, 519, fn. omitted), but need not raise all

764, 793.) Second, although it might sometimes be the case that the criminal conduct underlying a conspiracy conviction is so uncertain that it cannot reasonably be said to have caused the claimed economic losses, we are satisfied that the court’s finding in this case is supported by substantial evidence.

nonfrivolous issues (*Sanders*, at pp. 715–716, citing *Jones v. Barnes* [(1983)] 463 U.S. 745). Even if petitioner could demonstrate his appellate attorney acted unreasonably, he must still show prejudice. (*Smith v. Robbins* (2000) 528 U.S. 259, 285–286; *In re Harris* [(1993)] 5 Cal.4th [813,] 833.)” (*In re Reno* (2012) 55 Cal.4th 428, 488.)

Our Supreme Court has repeatedly stressed “ ‘that “[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] ... unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,” the claim on appeal must be rejected.’” (*People v. Wilson* (1992) 3 Cal.4th 926, 936, quoting *People v. Pope* (1979) 23 Cal.3d 412, 426.) A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding. (*People v. Wilson, supra*, at p. 936; *People v. Pope, supra*, at p. 426.) “We recommended in *Pope* that, “[t]o promote judicial economy in direct appeals where the record contains no explanation, appellate counsel who wish to raise the issue of inadequate trial representation should join a verified petition for writ of habeas corpus.” ’ (*People v. Wilson, supra*, at p. 936, quoting *People v. Pope, supra*, at pp. 426–427, fn. 17.) Because claims of ineffective assistance are often more appropriately litigated in a habeas corpus proceeding, the rules generally prohibiting raising an issue on habeas corpus that was, or could have been, raised on appeal [citations] would not bar an ineffective assistance claim on habeas corpus.” (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266–267.)

Spaccia contends prior appellate counsel rendered ineffective assistance by failing to challenge her convictions on counts 1 (conspiracy), 5, 6, 7 (conflicts of interest), and 9

(secreting an official document). Because the record does not indicate why prior appellate counsel did not challenge these convictions, Spaccia must demonstrate that no satisfactory explanation exists. We conclude she has failed to do so.

In count 1, the jury concluded that Spaccia conspired with Rizzo to misappropriate public funds from Bell. Spaccia argues that the conspiracy count is invalid for the same reason that the misappropriation counts were invalid, i.e., because the jury was improperly instructed on the elements of misappropriation of public funds. This argument is without merit. Conspiracy does not require proof that the target offense was committed. Instead, “[a] conviction of conspiracy requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act ‘by one or more of the parties to such agreement’ in furtherance of the conspiracy.” (*People v. Morante* (1999) 20 Cal.4th 403, 416.)” (*People v. Russo* (2001) 25 Cal.4th 1124, 1131.) Because conspiracy and misappropriation of public funds are different crimes with different elements, the instructional error regarding misappropriation of public funds did not impact the conspiracy count. And because the evidence supporting the conspiracy count was overwhelming, we see no basis to conclude counsel rendered ineffective assistance by failing to challenge that conviction in the first appeal.

Spaccia also claims prior appellate counsel was ineffective in not challenging her convictions on counts 5, 6, and 7, in which the jury convicted her of conflicts of interest (Gov. Code, § 1090) relating to her 2008 employment agreement with Bell and two

amendments (2005 and 2006) to her previous employment agreement.

Government Code section 1090 provides in relevant part: “Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” (Gov. Code, § 1090, subd. (a).) As the Supreme Court has observed, Government Code section 1090 “codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1072 (*Lexin*).) “The common law rule and section 1090 recognize ‘[t]he truism that a person cannot serve two masters simultaneously’ [Citations.]” (*Id.* at p. 1073.)

“To determine whether section 1090 has been violated, a court must identify (1) whether the defendant government officials or employees participated in the making of a contract in their official capacities, (2) whether the defendants had a cognizable financial interest in that contract, and (3) (if raised as an affirmative defense) whether the cognizable interest falls within any one of section 1091’s or section 1091.5’s exceptions for remote or minimal interests. [Citations.] Proof of a violation of section 1097, the provision criminalizing violations of section 1090, requires a further showing that the section 1090 violation was knowing and willful. [Citations.]” (*Lexin, supra*, 47 Cal.4th at p. 1074, fn. omitted.) Our Supreme Court has emphasized that “[w]hat differentiates section 1090 from other conflict of interest statutes such as the Political Reform Act of 1974 ... is its focus on the making of a *contract* in which one has an impermissible

interest.” (*Ibid.*, citing *People v. Honig* (1996) 48 Cal.App.4th 289, 333 (*Honig*).) Thus, Government Code “[s]ections 1090 and 1097 are more specific than the conflict-of-interest provisions of the [Political Reform Act of 1974, Government Code § 87100 et seq. (PRA)]. The former specifically apply to the making of governmental contracts while the latter apply to making, participation in making, or in any way attempting to use an official position to influence, any governmental decision. (§ 87100.) While the definition of making a contract is defined broadly under section 1090, it is not nearly as broad as the behavior at which the conflict-of-interest provisions of the PRA are aimed. [Citation.]” (*Honig*, at p. 329.)

As our prior opinion reveals, the evidence of Spaccia’s guilt on these three conflict-of-interest counts was overwhelming. (See *Spaccia I*, *supra*, 12 Cal.App.5th at pp. 1284–1286, 1296.) And given that we see no valid basis upon which to challenge those convictions, we conclude prior appellate counsel did not render ineffective assistance by failing to do so.

Finally, Spaccia contends prior appellate counsel should have challenged her conviction on count 9, in which the jury concluded Spaccia violated Government Code section 6200 by concealing a letter of acknowledgment between Bell and Adams stating that Adams would qualify for a medical disability retirement upon his retirement from employment with Bell. In so arguing, Spaccia views the evidence in the light most favorable to her rather than, as required, in the light most favorable to the judgment. In other words, Spaccia asks us to reweigh the evidence presented at trial, conclude her conviction is not supported by substantial evidence, and further conclude that prior appellate counsel was ineffective for not challenging the

conviction on that basis. Had prior appellate counsel so argued in the first appeal, however, we would have rejected the argument based upon well-settled principles of appellate review:

“In assessing the sufficiency of the evidence, we review the entire record to determine whether any rational trier of fact could have found defendant guilty beyond a reasonable doubt.

[Citation.] ‘The record must disclose substantial evidence to support the verdict—i.e., 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.’ [Citation.] In applying this test, we review the evidence in the light most favorable to the verdict and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. [Citation.] The same standard applies where the conviction rests primarily on circumstantial evidence. [Citation.] We may not reweigh the evidence or resolve evidentiary conflicts. [Citation.] The testimony of a single witness can be sufficient to uphold a conviction—even when there is significant countervailing evidence, or the testimony is subject to justifiable suspicion. [Citation.] Accordingly, we may not reverse for insufficient evidence unless it appears ‘ “that upon no hypothesis whatever is there sufficient substantial evidence to support ...” ’ ” the verdict. (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1157–1158.)

In sum, all the arguments Spaccia claims should have been asserted by prior appellate counsel are without merit and we would have rejected them if they had been raised in the prior appeal. Accordingly, we reject Spaccia’s claim that her prior appellate counsel rendered ineffective assistance.

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.