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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.

HECTOR MEJIA,

Defendant and Appellant;

B269681

(Super. Ct. No. BA379350)

In re

HECTOR MEJIA

on

Habeas Corpus.

B270051

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed. Petition for writ of habeas corpus is denied.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Hector Mejia pleaded nolo contendere to first degree burglary and admitted a prior strike. He now appeals from the judgment. Mejia has also filed a petition for writ of habeas corpus, which we consolidated with the appeal. We affirm the judgment and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background¹

On October or December 2, 2010,² David Miranda was staying at a motel. From his motel room, he heard glass breaking. Looking out his window, Miranda saw Mejia inside Miranda's car. After Mejia left, Miranda went to his car to see what was missing. Miranda was collecting papers scattered on the seat when Mejia returned and hit Miranda. Mejia went into Miranda's motel room and took Miranda's laptop and \$820. When Miranda tried to get his possessions back, Mejia hit Miranda again.

II. Procedural background

On January 21, 2011, an information was filed alleging count 1, first degree residential robbery (Pen. Code, § 211)³ and count 2, first degree burglary, person present (§ 459). The information alleged that Mejia had two prior serious or violent convictions within the meaning of the Three Strikes law, but one allegation was stricken. The information also alleged that Mejia

¹ The factual background is from the preliminary hearing.

² Miranda testified the crimes occurred on October 2; the information alleged they occurred on December 2.

³ All further undesignated statutory references are to the Penal Code.

had four prior prison terms, under section 667.5, subdivision (b), but one of those allegations was also stricken.⁴

On July 13, 2011, Mejia pleaded nolo contendere to count 1 and admitted he had a prior conviction within the meaning of the Three Strikes law. The court sentenced him to eight years in prison (the midterm of four years doubled to eight). He received 251 days of presentence custody credits. He was ordered to pay restitution to Miranda in the stipulated amount of \$2,200 (§ 1202.4, subd. (f)); a \$200 victim restitution fine (§ 1202.4, subd. (b)); a \$200 parole revocation assessment, which was stayed (§ 1202.45); a \$40 court operations fee (§ 1465.8); a \$30 court facility assessment (Gov. Code, § 70373, subd. (a)); a \$10 crime prevention fine (§ 1202.5); and a \$26 crime prevention penalty assessment.

Mejia thereafter moved to modify his sentence on the ground he was entitled to additional presentence credit. The trial court denied the motion, finding that robbery is a violent felony for which a defendant must serve 85 percent of his sentence including time spent in presentence custody.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues and which asked this court to conduct an independent review of the record, under *People v. Wende* (1979) 25 Cal.3d 436, 441. By letter dated July 27, 2016, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished

⁴ An amended information was filed on February 28, 2011, but the clerk's transcript on appeal does not contain a complete copy of that information.

this court to consider. We ordered Mejia's petition for writ of habeas corpus, filed on February 5, 2016, to be considered concurrently with the appeal. Mejia did not file a letter brief in the appeal.

A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (See generally § 1237.5; Cal. Rules of Court, rule 8.304(b).) The record on appeal does not contain a certificate of probable cause and therefore any issue that could be raised on appeal is limited. We discern no such issue.

Although Mejia did not file a letter brief in connection with the appeal, he did file a writ petition in which he contended that his defense counsel was ineffective because counsel failed to inform Mejia that the prior strike allegation was dismissed prior to entry of the plea. Mejia's argument is unclear. In any event, the original information alleged he had two prior serious or violent felonies: a conviction of section 211 in case number BA180233 and a conviction of section 211 in case number BA179482. Because those two cases had been consolidated into case number BA180233 and Mejia had pleaded guilty to only one violation of section 211, the trial court struck the allegation regarding case number BA179482. This left the allegation that Mejia had a prior strike conviction for section 211 in case number BA180233. Mejia admitted that allegation. Moreover, Mejia was present at the May 24, 2011 hearing at which these prior allegations were discussed and stricken. This record therefore reveals no misadvisement or ineffective assistance of counsel with respect to the prior conviction

allegation and plea. (See generally *Strickland v. Washington* (1984) 466 U.S. 668, 684; *People v. Scott* (1997) 15 Cal.4th 1188, 1211-1212.)

Mejia also contends the trial court erroneously “dismissed” his oral *Romero* motion.⁵ The trial court however denied it without prejudice. Nothing in this record reveals an abuse of discretion in denying that motion. (See generally *People v. Carmony* (2004) 33 Cal.4th 367, 375; *People v. Williams* (1998) 17 Cal.4th 148, 161.)

We have examined the record and are satisfied appellant’s attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

⁵ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

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ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.*

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