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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR ROBERT LOPEZ,

Defendant and Appellant.

B272050

(Los Angeles County
Super. Ct. No. TA137483)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura R. Walton, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Yun

K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Oscar R. Lopez appeals from a judgment and sentence of 10 years, following his plea of no contest to multiple drug, firearms and weapon possession counts. Appellant contends the trial court abused its discretion in denying his belated request to continue his sentencing. For the reasons set forth below, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

On August 14, 2015, appellant was charged with possession for sale of a controlled substance (Health & Saf. Code, § 11378; count 1), sale/offer to sell/transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a); count 2), possession of a firearm by a felon with five priors (Pen. Code, § 29800, subd. (a)(1); count 3),² having a concealed firearm in a vehicle (§ 25400, subd. (a)(1); count 4), carrying a loaded firearm (§ 25850, subd. (a); count 5), false compartment activity (Health & Saf. Code, § 11366.8, subd. (a); count 6), possession of shuriken (§ 22410; count 7),

¹ As appellant challenges only his sentencing, we omit the facts underlying his offenses.

² All further statutory citations are to the Penal Code, unless otherwise stated.

possession of a switchblade knife in a motor vehicle (§ 21510, subd. (a); count 8), and identifying information theft (§ 530.5, subd. (c)(1); counts 9 & 10). As to counts 1 and 2, it was further alleged that appellant was personally armed with a firearm (§ 12022, subd. (c)), and that he had suffered a prior drug conviction pursuant to Health and Safety Code section 11370.2, subdivision (c). As to counts 1 through 7, it was further alleged that appellant had served three prior prison terms (§ 667.5, subd. (b)).

Appellant initially pled not guilty. Subsequently, on the People's motion, the court dismissed count 10 pursuant to section 1385. Appellant was informed he faced a maximum sentence of more than 18 years in state prison. He rejected the People's offer of seven years, eight months in state prison, but accepted the court's offer of five years to be served in county jail with a "surrender date [at] the end of February." The trial court (Hon. Laura R. Walton) stated, "Okay. I'll [5] him till the end of February as a surrender date. He won't be sentenced until then with the understanding that if he fails to return on that date, his sentence will remain and he may end up doing more than 5 years if he doesn't come in on the agreed upon sentencing date."

Appellant withdrew his not guilty plea, waived his right to a jury trial and a court trial, and acknowledged the admonition that if "you fail to show up on your sentencing date, that your plea will stand as an open plea and the court could sentence you up to the maximum" He pled no

contest to the charges and admitted the special allegations. Appellant requested that the sentencing hearing be held on February 22, 2016, and the court so ordered.

At the February 22 sentencing hearing, appellant failed to appear. The bail bond company telephonically informed the court clerk that “the defendant has cut his ankle monitoring bracelet 1 block from the courthouse and a recovery team has been sent.” The court found bail forfeited and issued a bench warrant.

Appellant was subsequently taken into custody. On April 12, 2016, the court denied probation and sentenced appellant to 10 years in custody. Appellant filed a timely notice of appeal.

DISCUSSION

Appellant contends the trial court abused its discretion when it denied his belated request for a continuance and threatened to increase his sentence if he interrupted the pronouncement of sentence again.

1. Relevant Factual Background

At the April 12 sentencing hearing, the trial court recounted that appellant had entered an open plea to the court and failed to return for probation and sentencing. The prosecutor argued that because appellant failed to appear, “at minimum, Mr. Lopez should be looking at 7 years or more.” Defense counsel stated, “Mr. Lopez tells me that he did turn himself into the police after he didn’t show up for his court date, and that is what caused him to be brought before the court. He apologizes for not showing up. He was

dealing with a death in the family, I believe, and he just exercised very poor judgment. But we are asking the court to impose the 5 years that he agreed to due to the fact that he ultimately was brought before the court shortly after the original [probation and sentencing] date.”

The court responded: “Interesting. Because he could have brought himself into the court and walked into the court and given an excuse or asked for more time. Do you have evidence . . . the reason that he ended up in court on the warrant is because he, in fact, turned himself into the police?” Counsel replied, “Documentary evidence, no, I don’t have that.”

The court asked, “Does Mr. Lopez have that?” Appellant responded, “Yes, ma’am. The only thing that I have is a death in my family, which is my mother. It was wrong for me not to turn myself in, but I’m a human being. . . .”

The court inquired, “Do you have evidence that his mother passed away?” Appellant answered, “The evidence that I have is my mother’s gone. I don’t have no evidence.” The court inquired further: “Did she have a funeral? Do you have an obituary? Do you have a death certificate? Evidence such as that?” Defendant replied, “I don’t have it at hand, no, ma’am, I don’t.”

The court asked appellant, “[Do] you want to continue the probation and sentencing?” Defendant answered, “No, I don’t. I just want to continue my time and just carry on, ma’am. I just want to hurry up and get this over with.” The

court inquired, "So you don't want to continue the probation and sentencing so that you can have an opportunity to provide your attorney with evidence that, 1, you turned yourself into the police rather than [the police] picking you up on the no-bail warrant, and, 2, provide the court with evidence that you didn't come to court when you agreed to do so for sentencing because your mother passed away; is that correct?" Appellant answered, "Yes, ma'am." Appellant and counsel then conferred. Afterward, counsel informed the court that "[w]e're prepared to proceed with the sentencing."

The court denied probation and began sentencing. After the court pronounced the sentences on counts 1 and 2 - - midterm on both counts plus enhancements, totaling 10 years -- appellant interrupted. He stated, "Wait a minute, ma'am. Please, ma'am, 10 years for what? If there is anything I can do, ma'am, I'll do it, but 10 years from 5 years? . . ." The court replied, "You should have thought about that --" Appellant interrupted, "I turned myself in though. I turned myself into the -- to the law. 10 years?" The court stated, "I asked for proof of that . . . which you did not have." Appellant responded, "I understand that" and asked, "can we just put this off, please?" The court stated, "No."

Appellant continued to interrupt the court while it pronounced sentence on counts 3 through 5 (all stayed pursuant to section 654). The court then stated, "I've given you an opportunity. I put it here on the record, 'Do you want to continue it to provide me with proof?'. . . . You didn't want

to do that. So now you are being sentenced. And do not interrupt me again. This is my courtroom. Or I'll start all over again and we can start off with the high term as to each and every count. Now don't interrupt me again." Appellant apologized, and the court sentenced him to concurrent terms on the remaining counts.

2. *Analysis*

Under section 1050, subdivision (e), "Continuances shall be granted only upon a showing of good cause." "The determination of whether a continuance should be granted rests within the sound discretion of the trial court, although that discretion may not be exercised so as to deprive the defendant or his attorney of a reasonable opportunity to prepare." (*People v. Sakarias* (2000) 22 Cal.4th 596, 646.) "The party challenging a ruling on a continuance bears the burden of establishing an abuse of discretion." (*People v. Beames* (2007) 40 Cal.4th 907, 920.) "In the absence of a showing of an abuse of discretion and prejudice to the defendant, a denial of his or her motion for a continuance does not require reversal of a conviction." (*People v. Samayoa* (1997) 15 Cal.4th 795, 840.)

Appellant has not shown the trial court abused its discretion in denying his belated request for a continuance and postponement of sentencing. Appellant was initially scheduled for sentencing on February 22, 2016, but he failed to appear. When he appeared for sentencing on April 12, appellant confirmed that he had no evidence to explain his failure to appear on February 22. Minutes before appellant

made his belated request, the trial court asked whether he wanted a continuance to acquire such evidence. His answer was an unequivocal “No, I don’t.” After again being asked, appellant reaffirmed that he did not want a continuance. Appellant and his counsel conferred before counsel stated, “[w]e’re prepared to proceed with the sentencing.” Appellant did not seek a continuance after the court pronounced sentence on count 1; only after being sentenced on count 2 did appellant seek to postpone sentencing. On this record, we find no abuse of discretion. Appellant sought a continuance to collect evidence explaining his failure to appear on February 22. However, he had ample opportunity to present such evidence. The April 12 sentencing hearing occurred seven weeks after appellant absconded. Moreover, at the April 12 hearing, appellant was afforded two opportunities for a continuance, but declined both. The court’s denial of appellant’s belated request was well within its broad discretion.

Appellant further contends that the trial court’s “threat to further increase Lopez’s punishment . . . constitutes an abuse of discretion.” However, the trial court did not increase appellant’s punishment. The court’s remarks were made after it had already sentenced appellant to 10 years, and that punishment was not increased. Moreover, the court’s remarks did not prevent appellant from seeking a continuance. He had already made his request for a continuance before the court’s remarks. As stated above, the

trial court acted within its discretion in denying the belated request, and its later remarks had no impact on his sentence.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.