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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.

CARLOS ULYSIS LOBO,

Defendant and Appellant.

B285579

(Los Angeles County
Super. Ct. No. BA329478)

APPEAL from an order of the Superior Court of
Los Angeles County, Edmund Willcox Clarke, Jr., Judge.
Affirmed.

Jennifer A. Mannix, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Carlos Ulysis Lobo appeals from an order denying his motion to vacate his conviction under Penal Code section 1473.7¹ for assault with the intent to commit rape pursuant to section 220 subdivision (a). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background²

On April 22, 2007, the victim and her brother were assaulted by three men outside of a bar. The men abducted the victim, throwing her into a vehicle where she was blindfolded. The victim lost consciousness after one of the suspects choked her in an attempt to prevent her from screaming. She regained consciousness in a garage where she was stripped and sexually assaulted.

The sound of police sirens interrupted the assault, prompting the assailants to flee. Arriving officers observed the victim outside of the garage attempting to put her clothes back on. They identified her as a person who had recently been reported kidnapped and took her to a hospital for medical treatment. Lobo was arrested a few hours later.

A rape kit conducted on the victim included spermatozoa collected from her vagina and breast area. An analysis of the sample was later determined to contain Lobo's DNA.

¹ All subsequent statutory references are to the Penal Code.

² As the defendant entered a plea of no contest before trial, the facts are taken from the probation officer's report.

II. Procedural background

On April 17, 2008, a felony information was filed, charging Lobo with kidnapping for rape (§ 209(b)(1)), assault with the intent to commit rape (§ 220(a)), and sexual battery (§ 243.4(a)).

On June 19, 2008, Lobo entered a plea of nolo contendere to the assault with intent to commit rape charge in exchange for a six year suspended sentence and a grant of five years of formal probation.

On July 31, 2017, Lobo filed a motion to vacate his conviction pursuant to section 1473.7, referring to it as a petition for writ of habeas corpus on the grounds that (1) his plea was defective due to the ineffective assistance of counsel and prosecutorial misconduct, and (2) he was actually innocent.

On August 9, 2017, the court, also construing the motion as a petition for writ of habeas corpus, denied Lobo's request.

On October 5, 2017, Lobo timely filed a notice of appeal.

On March 6, 2018, court-appointed counsel for Lobo filed an opening brief and requested the court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. That same day, we advised appellant by letter that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider.

On March 29, 2018, Lobo filed a supplemental brief raising ineffective assistance of appellate counsel and other arguments.

On April 18, 2018, Lobo filed an addendum to his supplemental brief rehashing his ineffective assistance of trial counsel and prosecutorial misconduct claims in an apparent response to an adverse ruling on a habeas corpus petition brought in federal court.

DISCUSSION

First, Lobo's supplemental letter brief and addendum are, in essence, a restatement of his arguments rejected in the trial court. They offer no additional grounds for appeal or argument apart from the allegation that his appellate counsel has been ineffective by failing to restate those same contentions and by not requesting the reporter's transcript of the preliminary hearing in order to pursue his claim of actual innocence. To the extent that this argument is a request to have new appellate counsel appointed, it is denied.

As the trial court properly pointed out, Lobo's conviction arose from a no-contest plea in exchange for an agreed-upon disposition. Therefore, his claim as to actual innocence has been waived. (*People v. Maultsby* (2012) 53 Cal.4th 296, 301–304; *People v. Hester* (2002) 22 Cal.4th 290, 295.) “Although a defense attorney has a duty to advance all colorable claims and defenses, the canons of professional ethics impose limits on permissible advocacy. It is the obligation of any lawyer--whether privately retained or publicly appointed--not to clog the courts with frivolous motions or appeals. [A defendant] has no legitimate complaint that his lawyer refused to do so.” (*Polk County v. Dodson* (1981) 454 U.S. 312, 323.)

Next, Lobo's rehashed argument regarding the failure of his trial counsel to advise him of the immigration consequences of his plea is contradicted by the transcript of the plea and waivers taken by the trial court. During the colloquy, counsel specifically asked the court to address Lobo's concerns about possible deportation. The prosecutor unequivocally advised Lobo that he would be deported, denied re-entry into the United States, denied citizenship, and denied amnesty if he was not already a United States citizen. The court asked Lobo directly whether he understood "the consequences regarding deportation," to which he replied, "Yes."

Finally, the record on appeal is absent any indication that the prosecution withheld evidence in Lobo's case, and Lobo is unable to point to any specific instances of prosecutorial misconduct that could have provided a basis for relief under sections 1473.6 or 1473.7.

Therefore, after our independent review of the record, we 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.)

DISPOSITION

The order denying Lobo's motion to vacate his conviction is affirmed.

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DHANIDINA, J.*

We concur:

EDMON, P. J.

EGERTON, J.

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