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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BRANDON THOMPSON, Defendant and Appellant.	B278019 (Los Angeles County Super. Ct. No. LA083588)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph Brandolino, Judge. Affirmed.

Brandon Thompson, in pro. per.; and David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On September 8, 2016, a jury convicted Brandon Thompson of first degree burglary under Penal Code sections 459 and 460.[1] The jury also determined that "another person, other than an accomplice, was present in the residence" during the burglary, making the burglary a "violent felony." (§ 667.5, subd. (c)(21).) Thompson waived trial on whether he had a prior conviction for a "serious felony" for purposes of sections 667, subdivision (a)(1) and 1170.12, subdivision (b)(1), and admitted that he did.

The court sentenced Thompson to nine years in state prison. (§§ 461, subd. (a), 1170.12, subd. (c)(1), 667, subd. (a)(1).) He filed his notice of appeal the same day.

We appointed counsel to represent Thompson on appeal. After examination of the record, appointed counsel filed an opening brief raising no issues and asking this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) On April 12, 2017, we sent letters to Thompson and appointed counsel directing counsel to forward the appellate record to Thompson and advising him that within 30 days he could personally submit any contentions or issues that he wished us to consider.

Thompson responded with a letter brief in which he argues (1) the evidence presented at trial was insufficient to support his conviction, (2) the Public Safety and Rehabilitation Act of 2016, California Constitution, article I, section 32, precludes sentencing enhancements, (3) the jury was biased, and (4) he was afforded ineffective assistance of counsel both in the trial court and on appeal.

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[1] All statutory references are to the Penal Code, unless otherwise noted.

DISCUSSION

1. Sufficiency of the Evidence

When an appellant challenges the sufficiency of the evidence to support a criminal conviction, "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) "Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends." (*People v. Jones* (1990) 51 Cal.3d 294, 314.) It "is not a proper appellate function to reassess the credibility of the witnesses." (*Id.* at pp. 314-315.)

Thompson argues the burglarized building was not a residence, nothing was stolen during the burglary, the victims lied on the stand about whether one resident had to constantly remind another to close the garage, Thompson's fingerprints were not recovered from the property he was convicted of burglarizing, there was no evidence he was ever on the property, and there was no sign of forced entry into the property.

"The elements of first degree burglary . . . are (1) entry into a structure currently being used for dwelling purposes . . . (2) with the intent to commit a theft or a felony." (*People v. Sample* (2011) 200 Cal.App.4th 1253, 1261; §§ 459, 460.) A garage connected by a breezeway to a home is an "integral part of the main house," and satisfies the "structure currently being used for dwelling purposes" element of first degree burglary. (See *People*

v. Cook (1982) 135 Cal.App.3d 785, 795-796; see also *People v. Coutu* (1985) 171 Cal.App.3d 192, 193.) Forced entry is not an element of burglary. (*People v. Woods* (1980) 112 Cal.App.3d 226, 229.) Similarly, actual theft is not an element of burglary; intent to commit theft is. (§ 459; *People v. Moody* (1976) 59 Cal.App.3d 357, 362.)

The victims' garage is attached to their home by a breezeway. The victims testified that they saw Thompson emerge from their car parked in the garage. After Thompson got out of the car, one of the victims told him to "drop everything" and "get away from the car." Thompson dropped a hospital identification badge, some medication, a wallet, and some money, all belonging to one of the victims, and all of which had been inside the car.

Whether one resident had to constantly remind another to close the garage is not relevant to any element of burglary. Likewise, whether Thompson's fingerprints were recovered from anything at the scene is not relevant.

The record contains sufficient evidence to support Thompson's first degree burglary conviction.

2. Public Safety and Rehabilitation Act of 2016

Thompson argues that the Public Safety and Rehabilitation Act of 2016, California Constitution, article I, section 32 (PSRA), precludes sentencing enhancements in this case. Thompson is incorrect for two reasons. First, the PSRA does not affect sentencing enhancements. (Cal. Const., art. I, § 32, subd. (a)(1).) Second, the PSRA applies only to nonviolent felony convictions. (*Ibid.*)

3. Jury Bias

Thompson contends that several jurors were biased because they either had been burglary or robbery victims or had family members who were burglary or robbery victims. "Before an appellate court will find error in failing to excuse a seated juror, the juror's inability to perform a juror's functions must be shown by the record to be a 'demonstrable reality.'" (*People v. Holt* (1997) 15 Cal.4th 619, 659.) Here, neither Thompson's brief nor the record demonstrates any juror was unable to perform his or her functions.

4. Ineffective Assistance of Counsel

Thompson claims his trial counsel provided ineffective assistance by putting up only a token defense.

A claim that counsel was ineffective requires a showing by a preponderance of the evidence of objectively unreasonable performance by counsel and a reasonable probability that but for counsel's errors, the defendant would have obtained a more favorable result. (*In re Jones* (1996) 13 Cal.4th 552, 561.) The defendant must overcome presumptions that counsel was effective and that the challenged action might be considered sound trial strategy. (*Ibid.*) To prevail on an ineffective assistance claim on appeal, the record must affirmatively disclose the lack of a rational tactical purpose for the challenged act or omission. (*People v. Majors* (1998) 18 Cal.4th 385, 403.) A "court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant . . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." (*Strickland v. Washington* (1984) 466 U.S. 668, 697; accord, *In re Fields* (1990) 51 Cal.3d 1063, 1079.)

Thompson identifies no specific act or omission that was purportedly ineffective. And the record contradicts his general allegations of ineffective assistance. We can discern no basis to conclude a different result would have been achieved had counsel acted differently. Accordingly, we reject Thompson's claim of ineffective assistance.

Thompson contends his appellate counsel failed to communicate with him or his family, but fails to explain why that constitutes ineffective assistance.

5. Conclusion

We have examined the entire record and are satisfied that Thompson's appellate counsel has fully complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106, 109-110, and *People v. Wende*, *supra*, 25 Cal.3d at page 441. No arguable issues exist.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.