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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN ROBINSON,

Defendant and Appellant.

B269528

(Los Angeles County
Super. Ct. No. TA135950)

APPEAL from a judgment of the Superior Court of Los Angeles County, John J. Lonergan, Jr., Judge. Affirmed as modified.

Eileen Manning-Villar, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Allison H. Chung, Deputy Attorneys General for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Alvin Robinson, appeals from a judgment of conviction after a jury trial. A jury convicted defendant of one count of first degree burglary in violation of Penal Code¹ sections 459 and 461, subdivision (a). Also, the trial court found various prior convictions allegations to be true. (§§ 667, subd. (a)(1), 667, subd. (d), 667.5, subd. (b), 1170.12, subd. (b).) We affirm the judgment with a modification of the award of custody and conduct credits.

II. BACKGROUND

Eric Hill is the son of Viola Hill. He lives in Compton, California with his mother. On November 28, 2014, at approximately 2:50 p.m., Eric² was in the front yard raking leaves. Eric went back inside through the front door to use the bathroom. Upon exiting the bathroom, Eric saw defendant in the kitchen, holding Viola's purse. Defendant said that he was there to get Viola's purse for her. Eric did not recognize defendant. Eric did not give defendant permission to be in the house. Holding the purse, defendant turned around and ran out the back door.

¹ Further statutory references are to the Penal Code.

² Because two individuals share the same last name, we will refer to them by their first name for ease of reference. No disrespect is intended.

Eric chased defendant down the street. After passing three houses, defendant turned around and swung the purse at Eric. Eric, who was struck, suffered a small cut over his left eye. Eric grabbed defendant by the throat. Eric shoved defendant against a fence. Defendant dropped the purse on the sidewalk. Neighbors came and assisted Eric in holding defendant until the police arrived.

Meanwhile, Viola was raking leaves outside her Compton residence on November 28, 2014, at approximately 2:50 p.m. After Eric went inside the residence to use the bathroom, Viola testified she saw defendant run out of the house with her purse. She yelled out to Eric that defendant took her purse. She followed after Eric chased defendant. Viola saw defendant hit Eric with her purse and the medallion on the purse come off during the fracas. Viola testified she did not give defendant permission to be in the house. Viola was ready to hit defendant with a brick but was stopped from doing so.

On December 15, 2015, the jury returned a guilty verdict of first degree burglary in count 1. The jury acquitted defendant as to the second degree robbery as charged in count 2. Defendant waived his right to have the jury decide the prior conviction allegations. At the prior convictions hearing, Lela Black testified for the prosecution. She testified that defendant's prison records showed he sustained the following convictions for which he served prison time: two counts of second degree burglary on April 23, 1982; attempted first degree burglary on June 7, 1984; deadly weapon assault in violation of section 245, subdivision (a)(1) on December 5, 1989; and first degree burglary on July 29, 1992. Ms. Black testified that there had not been a five-year period in which defendant was not in custody since his 1982

conviction. The trial court received the documents reviewed by Ms. Black into evidence and found the prior conviction allegations were true.

On January 13, 2016, the trial court imposed a sentence of 28 years which it calculated as follows. Defendant was sentenced to the upper term of 6 years for the first degree burglary conviction. The sentence was doubled based on defendant's prior convictions under sections 667, subdivisions (d) and 1170.12, subdivision (b). The trial court struck all but one of the section 667, subdivision (d) and 1170.12, subdivision (b) prior serious felony convictions. The trial court also imposed an additional 15 years, based on 5 years each for the 3 prior section 667, subdivision (a)(1) felony convictions. Further, the trial court imposed an additional one year based on section 667.5, subdivision (b). The trial court also imposed the following fees and fines: \$300 restitution fine under section 1202.4, subdivision (b); \$300 parole revocation fine under section 1202.45 which was suspended; \$40 court operations assessment under section 1465.8; and \$30 court facilities assessment under Government Code section 70373. Defendant received 497 days of custody credit, based on 432 days of actual custody plus 65 days of good time credit.

III. DISCUSSION

We appointed counsel to represent defendant on appeal. After examination of the record, appointed appellate counsel filed an “Opening Brief” in which no issues were raised. Instead, appointed appellate counsel requested we independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 227-284.) On September 21, 2016, we advised defendant that he had 30 days within which to personally submit any contentions or arguments he wishes us to consider. Defendant filed a supplemental brief on September 28, 2016.

Defendant argues that the evidence did not demonstrate Eric was actually struck with the purse. The argument is immaterial to defendant’s first degree burglary conviction. The jury found defendant guilty of first-degree burglary, which only requires that he entered an inhabited dwelling house with intent to commit grand or petit larceny. (§§ 459, 460, subd. (a).)

We asked the parties to brief the issue of whether defendant received an excessive award of presentence custody credits. The trial court ruled defendant served 432 days of actual custody prior to trial. Defendant was arrested on November 28, 2014. Defendant was sentenced on January 13, 2016. Defendant thus had served only 412 days of actual custody. (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48 [presentence custody credit begins on day of arrest and continues through day of sentencing]; *People v. Bravo* (1990) 219 Cal.App.3d 729, 735.) Defendant is also entitled to 61 days of conduct credit. (§ 2933.1, subd. (c); *People v. Cooper* (2002) 27 Cal.4th 38, 40.) Defendant

thus should have received a total of 473 days of custody credits. We will modify the judgment accordingly.

IV. DISPOSITION

The oral pronouncement of judgment is modified to award defendant 412 days of custody credit and 61 days of conduct credits for a total of 473 days of presentence credits. Upon remittitur issuance, the superior court clerk is to prepare a corrected abstract of judgment and serve it on the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed as modified.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIN, J. *

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