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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.

RHODANKER MCGUFFIE,

Defendant and Appellant.

B284974

(Los Angeles County  
Super. Ct. No. VA116183)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick T. Meyers, Judge. Affirmed.

Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This case is before us for the second time. Defendant and appellant Rhodanker McGuffie was convicted on five counts of armed robbery and previously sentenced to a total term of 180 years to life and a determinate term of 111 years. In the prior appeal, we affirmed the judgment but conditionally vacated the sentence and remanded with directions to conduct an evidentiary hearing on whether appellant's plea in a prior conviction, case No. TA073071, was valid under *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122. (*People v. McGuffie* (May 26, 2016, B252505) 2016 Cal.App. Unpub. LEXIS 3881, at \*34 (*McGuffie I*.) Upon remand, the trial court struck the prior conviction in case No. TA073071 and sentenced appellant to a total term of 69 years 8 months.

In this appeal, appellant's counsel filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)) requesting that we conduct an independent review of the record. We have done so and conclude that no arguable issues exist. Accordingly, we affirm.

## **BACKGROUND**

In 2013, appellant was convicted by jury of five counts of second degree robbery. (Pen. Code, § 211.)<sup>1</sup> The jury found firearm and gang allegations to be true. (§§ 12022.53, subd. (b), 12022, subd. (a)(1), 186.22, subd. (b)(1)(C).) (*McGuffie I, supra*, 2016 Cal.App. Unpub. LEXIS 3881, at \*1-2.)

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<sup>1</sup> Unspecified statutory references will be to the Penal Code.

On remand for the hearing, appellant made a *Marsden* motion, seeking to have his defense counsel replaced. (*People v. Marsden* (1970) 2 Cal.3d 118.) The court held a *Marsden* hearing and denied the motion.

The trial court conducted a hearing to determine whether appellant's 2004 no contest plea to two counts of robbery in case No. TA073071 was valid. Edmont Barrett, appellant's defense counsel in case No. TA073071 and in a second case, No. NA059800, testified that he did not specifically recall the advisements he gave appellant on April 20, 2004, but he testified as to his general practice.

The court concluded that the record did not establish that appellant knowingly and intelligently waived his right to a jury trial in case No. TA073071 and therefore exercised its discretion to strike the prior conviction.

On August 31, 2017, the trial court sentenced appellant to a total term of 69 years 8 months, calculated as follows. The court selected the high term of 5 years on the base term, doubled for the prior strike (§§ 667, subd. (e), 1170.12, subd. (c)(1)) to 10 years, plus a consecutive 10-year gang enhancement under section 186.22, subdivision (b)(1)(C), a 10-year gun enhancement under section 12022.53, subdivision (b), and a 5-year enhancement under section 667, subdivision (a)(1), for a total term of 35 years on this count. The court sentenced appellant on each of the remaining four counts to consecutive sentences of one-third the midterm of 3 years, doubled to 2 years, plus one-third the gang enhancement for 3 years 4 months, plus one-third the gun enhancement

for another 3 years 4 months, for a sentence on each of these four counts of 8 years 8 months. Appellant timely appealed.

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *Wende*. On January 26, 2018, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. No response has been received to date.

We have independently reviewed the record and conclude that there are no arguable issues on appeal. (See *Wende, supra*, 25 Cal.3d at pp. 441–442; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278–279 [upholding the *Wende* procedure].)

### **DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.