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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.

THOMAS MILLS,

Defendant and Appellant.

B277518

(Los Angeles County
Super. Ct. No. BA444886)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall, Judge. Affirmed.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Thomas Mills appeals from a judgment entered following his convictions by pleas of no contest to two counts of second degree robbery (Pen. Code, § 211),¹ with various sentence enhancements. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Appellant was charged with two counts of second degree robbery in violation of section 211, and as to each it was further alleged that appellant personally used a deadly or dangerous weapon within the meaning of section 12022, subdivision (b)(1).

On May 9, 2016 a preliminary hearing was conducted, at which the following evidence was presented. On March 8, 2016, the manager of a 99 Cent Store found appellant in the store's warehouse area searching through merchandise. When the manager confronted appellant, he displayed a knife, threatened the manager, and pointed the knife at the manager's chest. The manager feared for his safety and backed away. Appellant then ran from the store with a case of bottled water that he did not pay for.

On March 10, 2016, the owner of the same 99 Cent Store found appellant behind the store near a trash bin. Appellant was holding merchandise from the store. When the owner approached appellant and demanded return of the store's merchandise, appellant threatened the manager, and swung a 15-inch metal pipe at him. The owner feared for his safety and backed away. Appellant fled from the area with the merchandise, which he did not pay for. Appellant was soon detained by the police, and he was positively identified by the owner during a field showup.

¹ Subsequent section references are to the Penal Code.

Store merchandise was found in the area where appellant was detained.

Appellant was held to answer on all charges at the preliminary hearing. On May 23, 2016, the People filed an information charging appellant with two counts of second degree robbery (§ 211). It was alleged as to each robbery that appellant personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). It was further alleged that appellant suffered eight prior felony convictions for which a prison term was served (§ 667.5, subd. (b)), one prior strike conviction (§§ 667, subds. (b) - (j) & 1170.12), and one prior serious or violent felony conviction (§ 667, subd. (a)(1)). On May 23, 2016, appellant was arraigned on the information, pled not guilty and denied all allegations.

On July 12, 2016, the case was called for trial. The court gave appellant an indicated sentence of 11 years in state prison, which was over the People's objection and less than the People's offer of 13 years in state prison. Appellant accepted the court's indicated sentence. Appellant was advised of the terms and consequences of the pleas and his constitutional rights, and appellant waived his rights and agreed to all terms. He pled no contest to two counts of second degree robbery (§ 211), and he admitted that he personally used a deadly or dangerous weapon in both robberies (§ 12022, subd. (b)(1)), that he suffered eight prior felony convictions for which a prison term was served (§ 667.5, subd. (b)), suffered one prior strike conviction (§§ 667, subds. (b) - (j) & 1170.12), and suffered one prior serious or violent felony conviction (§ 667, subd. (a)(1)).

The court struck the section 12022, subdivision (b)(1) deadly or dangerous weapon finding for count one, involving the May 9, 2016 robbery, and the court struck all eight of the section

667.5, subdivision (b) prison priors. The court therefore sentenced appellant to a total term of 11 years in prison, calculated for count one as four years for robbery, plus five years for the prior serious felony finding; and for count two as a consecutive sentence of two years. Appellant also received custody credits and was ordered to provide samples and pay fees and fines as required by law.

CONTENTIONS

After examining the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. (See *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) By notice sent on March 8, 2017, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider.

In a letter filed March 24, 2017, appellant contends the March 8, 2016 robbery should be reduced to petty theft because (1) the stolen property was “only a case of bottle[d] water” having minimal value, and (2) he entered his plea to that offense without receiving effective assistance of counsel and without knowledge, understanding and appreciation of the terms of the plea and its consequences. Appellant’s contentions have no merit.

As for appellant’s first contention, the value of the stolen property makes no difference. “Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211.) It is well settled that “ ‘robbery does not depend upon the value of the property taken,’ ” and the crime can be established “ ‘even though the property taken be of slight

value.’ ” (*People v. Simmons* (1946) 28 Cal.2d 699, 705; accord, *People v. Sutton* (1973) 35 Cal.App.3d 264, 270.)

Appellant’s second contention is not supported by the record. As noted, at the July 12, 2016 hearing, appellant was fully advised of the terms and consequences of the pleas and his constitutional rights, and he waived his rights and agreed to all terms. During the colloquy, appellant answered all questions clearly and forthrightly, and he did not express any uncertainty, confusion, or hesitation. He never expressed any disagreement or dissatisfaction with his attorney. After observing appellant respond appropriately to all advisements, the court made an express finding that “I find the waivers have been knowingly, intelligently, understandingly, freely and voluntarily given. The plea is free and voluntary.” The court’s minute order for the hearing similarly states: “Court finds that each such waiver is knowingly, understandingly, and explicitly made.” The sentence that appellant accepted was quite advantageous, as he faced a maximum sentence of 26 years in state prison. Appellant had considerable experience with the criminal justice system, and he was very familiar with the charges against him, having represented himself at the preliminary hearing. Under these circumstances, we find no basis for appellant’s contention.

REVIEW ON APPEAL

We have examined the entire record and are satisfied appellate counsel has complied fully with counsel’s responsibilities. (*Wende, supra*, 25 Cal.3d at p. 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The judgment is affirmed.

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JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

ALDRICH, J.

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