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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. MAURICE SLYDANES JOYLES, Defendant and Appellant.	2d Crim. B270291 (Super. Ct. No. 1472766) (Santa Barbara County)

Maurice Slydanes Joyles appeals his conviction by jury of attempted murder (Penal Code, §§ 664, 187, subd. (a)),[1] first degree residential robbery (§ 211), elder abuse with infliction of injury (§ 368, subd. (b)(1)), and grand theft of personal property (§ 487, subd. (a)). The jury found true the allegations that the attempted murder was willful, deliberate and premeditated (§ 189), that the robbery occurred in an inhabited dwelling, and that appellant stole property worth over $950.

[1] All further statutory references are to the Penal Code unless otherwise stated.

The trial court sentenced appellant to an indeterminate term of seven years to life for attempted murder. It further sentenced appellant to a consecutive upper term of six years for first degree residential robbery, and one-third of the upper term, or eight months, for grand theft of personal property.

The court imposed the upper term of four years for elder abuse with injury, but stayed the sentence pursuant to section 654. Accordingly, the aggregated sentence imposed is a determinate term of six years, eight months, consecutive to an indeterminate term of seven years to life. Appellant was awarded 395 days of presentence credit.

The trial court imposed a restitution fine of $10,000 pursuant to section 1202.4, subdivision (b), as well as a $10,000 fine pursuant to section 1202.45, with the latter fine suspended pending successful completion of parole. The court preliminarily ordered appellant to pay $100,000 in victim restitution to Frank Herold, pursuant to section 1202.4, subdivision (f), but retained jurisdiction to allow appellant to later challenge that amount.

Appellant and Kristine Wood had an on-again, off-again romantic relationship for several years. Wood's elderly great-uncle, Herold, lived close to Wood, and appellant and Herold became good friends. Wood and appellant had a falling out in December 2012, and Wood asked him to move out of her home. Herold invited appellant to live with him. Herold did not give appellant a key to the house, but appellant was free to come and go, and Herold hid a key under a wood pile.

In March 2013, Herold discovered that appellant had taken $500 from his wallet and another $150 in rolled quarters. Herold did not report the thefts to police, but he did tell Wood and a friend, Dallas Angele, about them. Herold subsequently

asked appellant to move out. Appellant moved back in with Wood.

After taking a lengthy trip, Herold noticed that he was missing a number of rare coins, currency, gold and jewelry that were stashed around his home. Herold told Wood that he suspected appellant of the thefts and asked her to tell appellant that he would be shot if he returned to Herold's property.

On December 31, 2014, appellant went to Herold's house at approximately 7 p.m. Appellant told him "I'll kill you" and then placed a rolled up garbage bag over Herold's head, and slammed him to the floor. Herold was unable to breathe at first, but he was able to lift the bag and get air. Herold and appellant struggled for about ten minutes. Herold "felt like [he] might die." Appellant, who was wearing gloves, eventually released Herold and removed the garbage bag. Appellant took $500 from Herold's wallet and agreed to leave after Herold promised he would not tell the police or Wood. As appellant left, he said, "I could have killed you." Herold responded, "Yeah, you sure could have."

Herold told Angele and Wood what had happened. Wood forced Herold to contact the Santa Barbara Sheriff's Department. Deputies photographed Herold's injuries from the attack and had him prepare a list of the items that were taken from his home.

The police arrested appellant. Records from appellant's cell phone provider showed that his phone had no activity between 7:37 p.m. and 9:05 p.m. on the night of the attack. Deputies subsequently discovered that appellant had pawned or sold coins and jewelry that had been taken from Herold's home.

Appellant testified at trial along with witnesses who were either with him on December 31, 2014, or who were character witnesses. Appellant stated he did not go to Herold's house on that date or take $500 from his wallet. He also claimed that items he pawned or sold either were owned by him or were given to him by Wood. He claimed he did not realize any of them were stolen.

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Appellant responded by filing a four-page handwritten supplemental brief in which he raised several issues for our consideration.

Many of the issues involve claims of ineffective assistance of counsel. Appellant argues that his attorney should have more effectively cross-examined the prosecution's witnesses regarding his cell phone, that additional witnesses should have been called on his behalf or examined more effectively, and that counsel should have made more of an effort to obtain a plea bargain. But where, as here, "'the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged,'" then a "claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding." (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Furthermore, appellant conceded at the sentencing hearing that "[i]t was [his] decision to go to trial," and to not accept the ten-year deal offered by the prosecution. And the trial

court observed that "the evidence was overwhelming on the charges of attempted murder. So, I don't think that this verdict is the result of inadequate representation or investigation on the part of your attorney."

Appellant also contends that the prosecutor should not have been allowed to use a transcript of a jailhouse conversation between appellant and a friend, Patrick Housh. The prosecutor used the transcript to refresh appellant's recollection of the conversation. Appellant has not demonstrated error.

Next, appellant claims that Trial Exhibit 80 should not have been shown to the jurors. The record reflects, however, that the trial court excluded the exhibit under Evidence Code section 352 because it was "more prejudicial than probative."

In addition, appellant argues that Trial Exhibit 77, which is a Department of Motor Vehicles photograph and information card, should have been excluded as prejudicial, but the record shows that his counsel did not object to its admission into evidence. The failure to object to the exhibit waives any claim of error on appeal. (Evid. Code, § 353; *People v. Partida* (2005) 37 Cal.4th 428, 433-434.)

Appellant also asserts that the trial court should have granted his section 1118.1 motion on the basis that the prosecution failed to present sufficient evidence to convince a jury that appellant is guilty of the theft counts. The trial court denied the motion, finding that "with regard to each of the items listed in Counts 4 and 5 Mr. Herold testified that he had such items, that the items were missing, and with regard to many of those items, at least in terms of their description, they're tied directly to [appellant] through the sales to various local businesses, pawn shops, and loan companies and so on." Substantial evidence

supports the court's ruling. (See *People v. Houston* (2012) 54 Cal.4th 1186, 1215.)

Finally, appellant asks us to modify his sentence and the $100,000 victim restitution award. We lack authority to do so. Appellant was sentenced in accordance with the law, and the trial court expressly reserved jurisdiction to adjust the victim restitution award upon application by appellant. Thus, any request to modify the restitution award must be raised in the trial court.

We have reviewed the entire record and are satisfied that appellant's counsel has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende*, *supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Brian E. Hill, Judge
Superior Court County of Santa Barbara

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.