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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. PRENELL GOODWIN, Defendant and Appellant.	B239872 (Los Angeles County Super. Ct. No. PA071556)

APPEAL from a judgment of the Superior Court of Los Angeles County, Beverly Reid O'Connell, Judge. Affirmed.

California Appellate Project and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Prenell Goodwin appeals from the judgment entered following his plea of no contest to possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) and his admission that he previously had been convicted of a serious or violent felony pursuant to the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced Goodwin to 32 months in prison. We affirm.

FACTUAL AND PROCEDURAL HISTORY

1. *Facts.*

At approximately 12:35 p.m. on September 27, 2011, Los Angeles County Deputy Sheriff Joseph Cerda was on duty in the area surrounding San Fernando Road and Penrose Street. As the deputy walked by, he observed defendant and appellant, Goodwin, sitting in the passenger seat of a "red/maroon" Ford Contour. The deputy was on the driver's side of the vehicle when he then saw Goodwin "toss[] a plastic bag, tied at one end, behind his passenger seat." Deputy Cerda took a closer look and saw on Goodwin's lap and the car's seat "several off-white rock-like substances resembling rock cocaine."

Cerda had Goodwin get out of the car and the substance which had been on his lap fell onto the passenger seat. Cerda "collect[ed]" the substance and booked it into evidence. Cerda, an experienced narcotics officer, indicated that the amount collected, 0.07 grams, is a "usable quantity of cocaine base."

2. *Procedural history*.

In an information filed November 30, 2011, Goodwin was charged with one count of possession of a controlled substance, cocaine, in violation of Health and Safety Code section 11350, subdivision (a). It was further alleged pursuant to Penal Code sections 667, subdivisions (b) to (i) and 1170.12, subdivisions (a) to (d), the Three Strikes law, that Goodwin previously had suffered three serious or violent felony convictions, one for first degree burglary and two for assault with a deadly weapon. It was also alleged pursuant to Penal Code section 667.5, subdivision (b), that Goodwin had been convicted of nine offenses for which he served prison terms.

At proceedings held on November 30, 2011, Goodwin pleaded not guilty to count 1 and denied all the special allegations.

On January 10, 2012, the trial court indicated that the People had conveyed an offer of the low term, doubled, or 32 months. Defense counsel indicated that Goodwin wanted the court to "consider giving [him] a program." The trial court had read and considered the probation report and agreed that the amount of narcotic involved was "very small." However, Goodwin's criminal history, which could only be described as "a long and varied" one, was a problem. Goodwin's files showed that, at least three of his prior convictions were for serious or violent felonies. In addition, Goodwin had multiple convictions for narcotics offenses. In view of these prior convictions, the trial court indicated that Goodwin had three options: "To accept the People's offer of [the low term] doubled, presumptive second strike, which would be [32 months], or you can go to trial or you can plead open with no promises, and I will hear whatever you have to say." The trial court indicated that, if Goodwin took the option of pleading for a term of 32 months that the court would "recommend a drug program in the prison system . . . so [he would] get the drug treatment that [he] desire[d]." When Goodwin asked if he could be housed in the county jail, the trial court indicated that he could not. "[B]ased on [his] prior conviction for a serious or violent felony[,] [t]he law [would] not permit [him] to be housed in the Los Angeles County Jail for the duration of [his] sentence." "[O]nce [he] went to the prison [he] would [serve his sentence] at 80 percent."

Several days later, on January 13, 2012, Goodwin informed the trial court that he wished to go to trial and that his family was going to retain private counsel. The trial court indicated that, if private counsel were retained, "that person [would need] to appear." The court continued, "I can't continue a matter just because there is a desire or an effort to get you private counsel, because as you may well imagine, many times private counsel never shows up. [¶] So [your present counsel] will remain to represent you." Goodwin then asked for a *Marsden*[1] hearing.

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[1] *People v. Marsden* (1970) 2 Cal.3d 118.

After the prosecutor left the courtroom, Goodwin indicated that his counsel had "called [him] a liar." Goodwin continued, "She tells my brother I cussed her out. I never, ever disrespected this woman, and nor [will] I ever . . . ." Goodwin indicated that his counsel "act[s] snotty" and refuses to tell him what she is doing with regard to his case; whether she is filing a motion or "whatever." Goodwin stated that they "signed a Proposition 36 and then all of a sudden [he was] not eligible for it . . . . [¶] She's telling me different things right now, and she said 'I don't believe nothing you're saying.' " Goodwin indicated that there was "no way" he could go to trial with his present counsel representing him. He had asked her to make some discovery motions and nothing had been filed. She had never even given him a card with her phone number on it and she had not called him. The only times he had seen her were immediately before court appearances. Goodwin indicated that he felt as though his "rights ha[d] been violated."

With regard to the fact that he wished to enter a plea pursuant to Proposition 36, the trial court informed Goodwin that he was not eligible as a matter of law; "[i]t would never happen."

Defense counsel indicated that, at one point in the proceedings, she had made a note in her file indicating that she thought Goodwin might be eligible for treatment under Proposition 36. However, since Mr. Goodwin refused to waive time so that counsel could determine whether he had been out of prison for five years, that option was not feasible. Later, counsel again decided to investigate whether Mr. Goodwin was eligible for Proposition 36 treatment. This time, however, the district attorney informed her that, not only would he not strike any of Goodwin's Three Strikes priors, but that Goodwin had been in prison in 2008, which was less than five years earlier. He was "[t]hereby render[ed] . . . ineligible for [treatment under] Proposition 36 as a matter of law."

With regard to motions, counsel "didn't see the need to do a *Romero*"[2] and she "didn't see a [motion to suppress evidence]."

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[2] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.)

After informing Goodwin of some case law, the trial court addressed him and stated: "I find that [defense counsel] just doesn't have to just agree with you because she represents you. She uses her best judgment and her training and experience to bring motions. She is entitled to disagree with you about the case. She is entitled to disagree with you about the motions to bring. [¶] So you have not stated sufficient grounds for firing [your counsel]. [¶] So your *Marsden* motion is denied."

Ten days later, on January 23, 2012, the matter was set to go to trial. The People, however, indicated that the offer, double the low term, or 32 months, was still open. The trial court then addressed Goodwin. The court stated: "As you know, with your record, you face life in prison, period. This is actually a fourth strike case[.]" "[I]f you are convicted and the prior serious felonies and prior state prison priors are found to be true, . . . you're exposed to a lot, a lot of time. And there's no guarantee that [the] judge who hears your case . . . would strike any of the prior serious felonies. [¶] Do you understand?" Goodwin responded, "Yes."

After again consulting with his counsel, Goodwin indicated that he wanted a trial. He was rejecting the offer because he "need[ed] a program." He did not "need prison."

On January 30, 2012, defense counsel indicated that she was ready for trial. Goodwin had then told the trial court that he wished to go in propria persona. After the trial court indicated that Goodwin's request to represent himself had not been timely, Goodwin indicated that he had retained private counsel. However, Goodwin's counsel had called retained counsel that morning and received a voice mail. Although counsel had explained that they were ready for trial and that retained counsel should call the court, retained counsel had neither called nor made an appearance. The trial court indicated that trial would begin the following day with Goodwin's current defense counsel.

The following day, Goodwin indicated that he had changed his mind and wished to do the low term in state prison, doubled to 32 months, with a drug program in the prison.

After a brief recess, the court addressed Goodwin and stated: "I have in my hand a pink felony advisement of rights, waiver and plea form. It appears to have your initials in the boxes along the right. It also appears to be signed by you indicating that you freely and voluntarily wish to plead no contest to count 1, admit your prior conviction for a serious or violent felony, receive the low term of 32 months prison where I will declare you to be an addict and you will be provided a drug treatment program in the prison facility. [¶] Is that your understanding of the agreement?" Goodwin responded, "Yes."

The trial court advised Goodwin of his right to be represented by counsel, his right to a trial by jury, his right to confront and cross-examine the witnesses against him, his right to use the subpoena powers of the court at no cost and his privilege against self-incrimination. The court informed Goodwin that he would be required to pay a $240 victim restitution fine (Pen. Code, § 1202.4, subd. (b)), a $50 laboratory fee (Health & Saf. Code, § 11372.5), a $40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), a $30 criminal conviction fee (Gov. Code, § 70373) and a stayed $240 parole revocation restitution fine (Pen. Code, § 1202.45). Goodwin then pleaded no contest to count 1, possession of a controlled substance on or about September 27, 2011, and admitted that he previously had been convicted of a "serious or violent felony on or about October 15, 1985, first degree burglary." The trial court accepted the plea, adjudged Goodwin guilty of count 1 and found the admission to the prior serious or violent felony to be true.

The trial court, in accordance with the agreement of the parties, sentenced Goodwin to 16 months in state prison, then doubled the term to 32 months "based upon the defendant's admission of a prior conviction to a serious or violent felony for a total term of . . . 32 months in state prison[.]" Goodwin was awarded presentence custody credit for 127 days actually served and 127 days of good time/work time, for a total of 254 days. The court declared Goodwin an addict and recommended that he receive "narcotic addiction treatment in the state facility." Finally, on the People's motion, the court dismissed all remaining counts and allegations. (See Pen. Code, § 1385.)

Goodwin filed a timely notice of appeal.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed May 29, 2012, the clerk of this court advised Goodwin to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On July 2, 2012, Goodwin submitted a letter brief in which he asserted that he was mislead into accepting a plea bargain for 32 months in prison when he is eligible for probation and treatment pursuant to Proposition 36.

Proposition 36, which was adopted by the voters in the November 2000 election, provides for probation and drug treatment for certain nonviolent drug offenders. It, however, "excludes from the program other offenders . . . who have previously committed serious or violent felonies and have not remained free of prison custody for five years." (*In re Varnell* (2003) 30 Cal.4th 1132, 1135; see Pen. Code, § 1210.1, subd. (b)(1).) Here, Goodwin had admitted having been convicted of a "serious or violent felony on or about October 15, 1985, first degree burglary." In addition, it was determined by the prosecutor that Goodwin had been serving time in prison in 2008, less than five years before the present offense. Finally, in the information filed in the present matter, it was alleged that Goodwin had been convicted of three serious or violent felonies: first degree burglary and two assaults with a deadly weapon, and that he had been convicted of, and served prison terms for nine offenses pursuant to Penal Code section 667.5, subdivision (b).[3] Under these circumstances, Goodwin is simply not eligible for treatment under Proposition 36.

Although Goodwin's counsel had hoped otherwise, the trial court and the prosecutor were correct in their conclusion that Goodwin was not eligible for Proposition 36 treatment as a matter of law and they so informed him. After the prosecutor informed her that Goodwin had been in prison in 2008, even his own counsel

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[3] A review of Goodwin's probation report also indicates that he has a lengthy criminal history.

informed him that he was not eligible for the program. Under these circumstances, Goodwin cannot complain that he was "mislead" into taking the plea agreement.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P.J.

We concur:

KITCHING, J.

ALDRICH, J.