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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS DELAO,

Defendant and Appellant.

B288764

(Los Angeles County  
Super. Ct. No. BA462619)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura F. Priver, Judge. Affirmed.

Elana Goldstein, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Louis DeLao appeals from the judgment entered following his negotiated plea of no contest to first degree burglary with a prior strike conviction. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *Incident***

According to the preliminary hearing transcript, early on the morning of November 14, 2017 Sergio Gonzalez and Roberto Mendez found DeLao, whom they knew as “Eddie,” standing in the living room of their home. He was holding a bottle of wine in each hand. DeLao had apparently taken the bottles from the kitchen. DeLao refused to leave, claiming he was being chased by someone outside the house. Gonzalez said he was calling the police; DeLao replied he would stay because he wanted police protection. Officers arrived and arrested DeLao.

### **B. *The Information, Plea, and Sentencing***

The People charged DeLao in an information with first degree burglary with a person present (Pen. Code, §§ 459, 667.5, subd. (c)). The information specially alleged DeLao had suffered a 2016 conviction for first degree burglary (Super. Ct. L.A. County No. BA443639) that was a serious felony within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) and section 667, subdivision (a)(1). DeLao pleaded not guilty and denied the special allegations.

At a pretrial hearing on January 4, 2018, the prosecutor advised the trial court the People had offered a negotiated plea to DeLao that if he pleaded to the first degree burglary charge, he would be sentenced to the lower term of two years in state prison,

doubled under the three strikes law, for an aggregate term of four years, concurrent with a four-year term for his probation violation in Los Angeles County Superior Court No. BA443639.

DeLao completed an advisement and waiver of right to counsel form (commonly referred to as a *Faretta* waiver), requesting to represent himself (*Faretta v. California* (1975) 422 U.S. 806 (*Faretta*)). When the trial court inquired of DeLao whether he was requesting to represent himself, DeLao responded, “[It’s the] [o]nly thing I got to do. I have no choice.” The trial court told DeLao that he did have choices, and treated DeLao’s request as a motion to replace his appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*)). The trial court proceeded to conduct a *Marsden* hearing.

Prior to ruling on DeLao’s motions, the trial court inquired of the prosecutor, based on a request from DeLao, whether the People would consider allowing DeLao to plead to a nonstrike offense. The prosecutor responded this was not an option in light of the severity of the first degree burglary charge, video footage of DeLao inside the home, and the recency of the prior strike. DeLao then requested he be sent to a mental health facility to address his mental health issues. The trial court responded that the People’s offer was for state prison, not treatment in a mental health facility. The trial court stated it would appoint a psychological expert if requested by the defense. DeLao’s attorney then stated, after conferring with DeLao, that DeLao would like to accept the People’s offer to plead to the first degree burglary, person present charge, and admit to the probation violation, for an aggregate sentence of four years in state prison. DeLao confirmed he wanted to accept the People’s offer, had

sufficient time to confer with his attorney, and was withdrawing his *Faretta* motion.<sup>1</sup>

The trial court advised DeLao of his constitutional rights and the nature and consequences of the plea, which DeLao stated he understood. DeLao pleaded no contest to the charge of first degree burglary, person present, admitted he sustained the prior strike conviction, and admitted the probation violation in case No. BA44363. DeLao's counsel joined in the waivers of DeLao's constitutional rights and stipulated DeLao's plea was entered pursuant to *People v. West* (1970) 3 Cal.3d 595. The trial court found DeLao's waivers, plea, and admissions were voluntary, knowing, and intelligent and that there was a factual basis for the plea.

Pursuant to the plea agreement, the trial court sentenced DeLao to an aggregate state prison term of four years. The trial court selected the lower term of two years for first degree burglary, which it doubled under the three strikes law. The court imposed a concurrent four-year state prison term (the middle term) for the probation violation. The trial court awarded DeLao on the sentence for the first degree burglary charge 71 days of presentence custody credit (62 actual days, plus 9 days conduct credit).

DeLao filed a notice of appeal in which he checked the preprinted box indicating his appeal was "based on the sentence

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<sup>1</sup> Given DeLao's statement that he had sufficient time to confer with his lawyer and his continued consultation with his attorney, he was impliedly also withdrawing his *Marsden* motion.

or other matters occurring after the plea.”<sup>2</sup> DeLao did not request a certificate of probable cause.

## DISCUSSION

We appointed counsel to represent DeLao on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On August 14, 2018 we advised DeLao

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<sup>2</sup> DeLao’s notice of appeal was filed on March 7, 2018, which was 62 days after entry of the judgment on January 4, 2018. (See Cal. Rules of Court, rule 8.308(a) [notice of appeal must be filed within 60 days after rendition of judgment or making of order being appealed].) However, because DeLao was a state prison inmate acting in propria persona, the “prison-delivery rule” applies, under which “a prisoner’s notice of appeal is deemed to have been filed in the office of the appropriate county clerk on the date . . . on which it was delivered to the prison authorities.” (*In re Jordan* (1992) 4 Cal.4th 116, 130; see Cal. Rules of Court, rule 8.25(b)(5) [“If the clerk receives a document by mail from an inmate or a patient in a custodial institution after the period for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document, the document is deemed timely.”].) The last day in which DeLao could have properly filed his notice of appeal was Monday, March 5, 2018, the 60th day. DeLao signed the notice of appeal on February 25, 2018, and would have given the notice to prison officials to mail. Although we do not have the envelope in which the notice was mailed, we assume the notice was mailed on or before March 5, 2018 given DeLao’s signature on February 25, 2018 and receipt by the court of the notice on March 7, 2018, mailed from state prison in Delano, California. Accordingly, we deem DeLao’s notice of appeal to have been timely filed under the prison-delivery rule.

that he had 30 days in which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the record with respect to potential sentencing or post-plea issues that do not in substance challenge the validity of the plea itself and are satisfied DeLao's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

### **DISPOSITION**

The judgment is affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.