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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM ARTELL MILES,

Defendant and Appellant.

B283644

(Los Angeles County
Super. Ct. No. BA443004)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Dabney, Judge. Reversed and remanded.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Gregory B. Wagner, Deputy Attorney General, for Plaintiff and Respondent.

On February 21, 2017, the Los Angeles County District Attorney's Office filed an amended information charging defendant and appellant William Artell Miles with three counts of second degree robbery (Pen. Code, § 212.5, subd. (c); counts 2, 3, & 4). It was also alleged as to each count that the crime had been committed for the benefit of, at the direction of, and in association with a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)), rendering each offense a serious felony within the meaning of Penal Code section 1192.7, subdivision (c)(28). It was further alleged as to each count that a principal had personally used a handgun within the meaning of Penal Code section 12022.53, subdivisions (b) and (e)(1), and that defendant had suffered a prior strike within the meaning of Penal Code section 1170.12. Moreover, it was alleged that defendant was ineligible for probation because he had twice previously been convicted in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony. (Pen. Code, § 1203, subd. (e)(4).)

On March 20, 2017, pursuant to a plea bargain, defendant pleaded nolo contendere to counts 2 and 3 and admitted that in the commission of the crime alleged in count 2 he had personally used a handgun. (Pen. Code, § 12022.53, subd. (b).) He was sentenced to serve three years in state prison for count 2 plus a consecutive 10-year term for the firearm enhancement, and a consecutive term of one year for count 3. Various fines were assessed, and defendant was awarded certain custody credits.

This timely appeal ensued. Defendant's attorney originally filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, and defendant filed a supplemental brief. We address his arguments in turn.

A. Defendant's claim that his attorney refused to investigate certain claims

First, defendant argues that he was denied effective assistance of counsel because she refused to investigate his claim that he was “involuntarily” intoxicated and/or unconscious. He asserts that he did not knowingly consume any narcotics and his attorney should have looked into that fact as opposed to “settl[ing]” with a plea on his behalf. Other than his own self-serving assertion that he did not knowingly consume narcotics, defendant offers no supporting evidence. And he does not offer any argument explaining what his attorney should have done differently in her representation of him. While he argues that he was denied his medical records, and those records would have allowed him to present a meaningful defense, we do not agree. Those records may set forth the amount of narcotics in defendant's system, but defendant has not shown how the records would shed light on whether defendant ingested those narcotics voluntarily.

B. Defendant's claim that his case must be remanded for resentencing

Next, defendant argues that his case must be remanded to permit the trial court to exercise its discretion under Penal Code section 12022.53, subdivisions (c) and (h), to strike the firearm enhancement. As noted above, defendant's sentence in this case includes a sentence enhancement of 10 years. Pursuant to Penal Code section 12022.53, subdivision (h), remand is appropriate here to allow the trial court to exercise its discretion as to whether to strike the firearm enhancement. (*People v. Woods* (2018) 19 Cal.App.5th 1080, 1090–1091.)

In urging us to reject this argument, the People contend that this issue is not cognizable on appeal because defendant did not obtain a certificate of probable cause. Pursuant to *People v. Hurlic* (2018) 25 Cal.App.5th 50, 57–59, we disagree. Under the circumstances presented here, defendant was not required to obtain a certificate of probable cause.

The People also argue that remand would be futile because the plea agreement provides a “clear indication that the trial court” would not have exercised its discretion to strike the firearm enhancement and lessen the sentence. We disagree. A remand is required unless the appellate record from the initial sentencing “clearly indicate[s] the [trial] court would not have exercised discretion to strike the firearm allegations had the court known it had that discretion.” (*People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1081.) Here, even though the trial court approved of the plea agreement, it did not say anything about whether it might strike the firearm enhancement. Thus, defendant is entitled to a remand.

Alternatively, the People ask that if we determine that remand is appropriate, “the prosecutor should be permitted to rescind the plea agreement and revive the counts she had previously requested be dismissed.” “[B]ecause Senate Bill No. 620 grants the trial court at most the discretion to strike the [10-year] firearm enhancement and leaves the [three-year second degree robbery sentence] intact, the trial court may end up reimposing the originally agreed-upon” term. (*People v. Hurlic*, *supra*, 25 Cal.App.5th at p. 57[.] In other words, the “resentencing under Senate Bill No. 620 still does not

‘eviscerate[] . . . the . . . plea bargain,’ in this case, and thus, the People may not seek to set aside the plea.” (*Ibid.*)

DISPOSITION

The judgment is reversed, and the case is remanded to the trial court to exercise its discretion whether to lessen defendant’s sentence pursuant to amended Penal Code section 12022.53, subdivision (h).

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ