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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.

JAMARAE LAMONZE KEYES,

Defendant and Appellant.

B267524

(Los Angeles County
Super. Ct. No. BA433324)

THE COURT:*

On April 30, 2015, the Los Angeles County District Attorney filed an amended information charging appellant Jamarae Lamonze Keyes with two counts of robbery (Pen. Code, § 211)¹ and alleging that he personally used a firearm in the commission of each offense (§ 12022.53, subd. (b)). The amended information further alleged that appellant was previously convicted of first degree burglary and that his conviction qualified as a “strike” under the “Three Strikes” law (§§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)) and a

* BOREN, P. J., ASHMANN-GERST, J., HOFFSTADT, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

prior serious felony conviction (§ 667, subd. (a)(1)). Two prior prison term enhancements were also alleged (§ 667.5, subd. (b)). Appellant pleaded not guilty.

After trial, the jury found appellant guilty of two counts of robbery. Because it could not reach a unanimous decision on the firearm allegations, the trial court dismissed them. In a bifurcated proceeding, the prior conviction allegations were found true.

Appellant was sentenced to a total of 14 years in state prison.

Appellant timely filed a notice of appeal.

Counsel was appointed to represent appellant in connection with this appeal. After examination of the record, counsel filed an “Opening Brief” in which no arguable issues were raised. On July 21, 2016, we advised appellant that he had 30 days within which to personally submit any contentions or issues for us to consider.

At appellant’s counsel’s request, we granted appellant an extension until September 21, 2016, to file his supplemental brief. Approximately six weeks later, on November 3, 2016, we received a hand-written supplemental brief from appellant. He asserts that the trial court erred in finding him voluntarily absent after a two-hour delay from the proceedings. He contends that the trial court was “in a hurry to complete” his case and denied his attorney time to locate him. He argues that this amounted to a prejudicial violation of his due process rights as he did not present a defense.

We have examined the entire record and we are satisfied that appellant’s appellate counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*)). We see no indication of any error by the trial court.

Setting aside the tardiness of appellant's supplemental brief, appellant has not demonstrated reversible error. In a noncapital case, the trial court has the discretion to allow the trial to continue when "the defendant is voluntarily absent." (§ 1043, subd. (b)(2).) The trial court's factual finding that the defendant was voluntarily absent is reviewed for substantial evidence. (*People v. Concepcion* (2008) 45 Cal.4th 77, 84.) "Before it can make a finding that a defendant's absence is knowing and voluntary, a trial court must make reasonable inquiry and have 'sufficient facts before it.' [Citation.] The defendant must be given a 'full opportunity to explain his absence.' [Citation.] The court cannot 'look solely at the facts initially before the court' but must base its determination 'upon the totality of the facts; not just a portion of them.'" (*People v. Disandro* (2010) 186 Cal.App.4th 593, 602.)

Here, trial commenced on May 12, 2015, and appellant was present. When proceedings ended that afternoon, the trial court ordered appellant to return to court the following day at 10:15 a.m. However, at 11:00 a.m., appellant still was not there. And, appellant's trial counsel had not received any messages from appellant. Notably, the trial court reminded the attorneys that appellant had previously been warned not to be late, as he had been late in the past. Because the jury, counsel, and trial court had been ready since 10:30 a.m., and it was the second time that appellant had been late, the trial court was considering "trial in absentia." At appellant's trial counsel's request, the trial court continued the matter.

By 1:35 p.m., appellant had still not appeared. Attempts were made to contact him to no avail. In light of the foregoing, the trial court found good

cause under section 1043 to find that he voluntarily absented himself from trial.²

In his supplemental brief, appellant has not shown that the trial court's decision is not supported by sufficient evidence. Appellant was in court on May 12, 2015, when he was ordered to appear the following morning. He failed to do so. He failed to contact either the trial court or his attorney. While he claims in his supplemental brief that he had "severe dental problems," he never so advised the trial court. Under these circumstances, we conclude that the trial court did not err in proceeding with the trial without him.

Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment and sentence entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The judgment is affirmed.

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² Appellant remained absent on May 14, 15, and 18, 2015. He reappeared without explanation for his absence on July 30, 2015.