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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.

GUY H. NELSON,

Defendant and Appellant.

B282695

(Los Angeles County
Super. Ct. No. GA054045)

THE COURT*:

Guy H. Nelson filed a timely notice of appeal challenging the trial court's denial of his 2017 motion to withdraw his 2003 guilty plea and also contending that his sentence should be reduced due to a change in Penal Code section 212.5. He requested a certificate of probable cause, which the trial court granted.

* ASHMANN-GERST, Acting P.J. HOFFSTADT, J. GOODMAN, J.†

† Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

We appointed counsel to represent defendant on this appeal. Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requested this court to independently review the record on appeal to determine whether any arguable issues exist. On October 11, 2017, we sent a notice to defendant, advising him he had 30 days in which to personally submit any contentions or issues which he wished us to consider.

Defendant has filed a supplemental brief contending there is no record showing that he entered a guilty or no contest plea to second degree robbery in this case and that he should be resentenced or the case dismissed. The record in this matter is adequate. We affirm the trial court's denial of defendant's motion to withdraw his plea.

BACKGROUND

In a felony complaint dated July 18, 2003, defendant was charged with the second degree robbery of Dwayne Gunnells (count 1) and with the commercial burglary of a Ralphs grocery and with petty theft (with a prior theft-related conviction) from Ralphs (counts 2 & 3). That same day, defendant was arraigned and pleaded not guilty to all three counts.

On July 31, 2003, defendant pleaded no contest to the second degree robbery charge and was placed on probation for three years. The commercial burglary and petty theft charges were dismissed pursuant to the plea agreement. On January 19, 2006, defendant admitted violating his probation and was sentenced to two years in state prison.

Defendant's filings in this matter show he is currently in prison on another matter. His brief suggests that a portion of his current sentence is attributable to the use of his second degree robbery conviction in this case to support an enhancement term or sentencing under the Three Strikes law.

DISCUSSION

1. The Adequacy of the Record

Defendant contends, correctly, that there is no reporter's transcript for any proceedings in 2003 or 2006. However, the clerk's transcript in this case contains the complaint and a number of minute orders.

Minute orders can be an adequate substitute for a reporter's transcript, particularly for plea agreements. (See *People v. Dubon* (2001) 90 Cal.App.4th 944, 955; ["Courts have found, in regard to waivers, that a minute order can establish a valid waiver where the transcript of the proceedings is silent."]; (*People v. Malabag* (1997) 51 Cal.App.4th 1419, 1423 ["Absent a conflict between the transcripts, the clerk's transcript can establish a valid waiver where the reporter's transcript is silent on the matter."]; *In re Ian J.* (1994) 22 Cal.App.4th 833, 839 [clerk's minutes were adequate substitute for verbatim record].)

Here, the minute order for July 31, 2003, is detailed and provides an adequate substitute for a reporter's transcript. That order states defendant was "advised of and personally and explicitly waives the following rights: trial by court and trial by jury[;] confrontation and cross-examination of witnesses; subpoena of witnesses into court to testify in your defense; against self-incrimination; defendant advised of the following: the nature of the charges against him, the elements of the offense in the complaint, and possible defenses to such charges; the possible consequences of a plea of guilty or nolo contendere, including the maximum penalty and administrative sanctions and the possible legal effects and maximum

penalties incident to subsequent convictions for the same or similar offenses; the effects of probation.”¹

The order further states the court finds defendant’s waiver was “knowingly, understandingly, and explicitly made; [and] the defendant personally withdraws plea of not guilty to count 01 and pleads nolo contendere with the approval of the court to a violation of section 211 PC in count 01. The court finds the defendant guilty.”

The minute order also states: “Imposition of sentence suspended[.] Defendant placed on formal probation for a period of 003 years under the following terms and conditions: serve 090 days in county jail.” Count 2 (commercial burglary) and count 3 (petty theft with a prior) were dismissed as part of the plea agreement. Thus, the minute orders provide sufficient proof that defendant pled no contest to second degree robbery in 2003.

The minute order for January 19, 2006, shows defendant admitted violating probation and probation was revoked. The trial court sentenced defendant to the low term of two years in state prison for his robbery conviction. As the abstract of judgment makes clear, the sentence was for second degree robbery, as defined by Penal Code section 212.5. Penal Code section 213 provides that second degree robbery is punishable by imprisonment in the state prison for two, three, or five years. (§ 213, subd. (a)(2).) Although neither the 2003 nor the 2006 minute order indicates whether there was any discussion of defendant’s potential sentence should he fail to complete probation, defendant was sentenced to the lowest possible

¹ Defendant was also advised: “If you are not a citizen, you are hereby advised that a conviction of the offense for which you have been charged will have the consequences of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States.”

term for his conviction. Thus, there is no support for defendant's claim that he should have been sentenced to a lower term.

Although the Penal Code has been amended many times since defendant was convicted in this case, none of those amendments altered the basic definition of robbery or lessened the punishment for second degree robbery. The last revisions to sections 212.5 and 213 occurred in 1994, well before defendant committed the robbery in this case. (Stats. 1994, ch. 919, § 1; Stats. 1994, ch. 789, § 1.) Thus, defendant's two-year sentence was authorized when it was imposed in 2006, and is still authorized today.

2. Independent Review of the Record

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.)

DISPOSITION

The trial court's order is affirmed.