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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.

JOSEPH DALE KLUM,

Defendant and Appellant.

B280517

(Los Angeles County
Super. Ct. No. NA105290)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Lowenthal, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Joseph Dale Klum appeals from the judgment entered following his plea of no contest to grand theft of personal property, with an admission he suffered a prior felony conviction. (Pen. Code, §§ 487, subd. (a), 667, subd. (d).)¹ The court sentenced appellant to prison for two years eight months. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A preconviction probation report reflects as follows. On October 13, 2016, the operations supervisor of a CVS store saw appellant walk down store aisles, fill his shopping cart with merchandise, and exit the store without paying for the items. A cashier demanded that appellant return but he did not. When a store security officer told appellant police were being notified, appellant fled with the cart, which contained 71 items of merchandise with a total value of \$1,128. On November 5, 2016, Los Angeles police officers saw appellant, who matched the description of the theft suspect. The officers arrested appellant, who told them he had taken food and hygiene items.

The report also reflects as follows. Appellant was born on November 15, 1982. In 2004, the court sentenced him for driving under the influence of alcohol (Veh. Code, § 23152, subd. (b); case No. NEW 4NE01223) and disorderly conduct (§ 647, subd. (f); case No. NEW 4NE01988). In 2004, the court also placed appellant on summary probation for one year for building fires on posted land (§ 602, subd. (j); case No. NEW 4NE01920). In October 2007, the court placed appellant on formal probation for three years for first degree burglary (§ 459; case No.

¹ Unless otherwise indicated, section references are to the Penal Code.

XNW LA056421 (the strike)). In that matter, on April 15, 2010, the court modified appellant's probation and reinstated it, and the court ordered him to serve time in local custody. On April 11, 2010, appellant was arrested for inflicting corporal injury upon a spouse or cohabitant (§ 273.5, subd. (a); case No. LAA 0CA05037) and the court placed him on summary probation for three years. In that matter, in August 2011, the court modified probation and reinstated it, and the court ordered appellant to serve time in local custody.

In 2012, the court placed appellant on summary probation for three years for inflicting corporal injury upon a spouse or cohabitant (case No. LAA 2CA04712). In 2015, the court placed appellant on summary probation for three years for appropriating lost property (§ 485; case No. LB 5LG04993). All of the above offenses were misdemeanors except the first degree burglary, which was a felony. Appellant was on probation in case No. LB 5LG04993 when he committed the present offense.

On November 8, 2016, a felony complaint was filed alleging appellant committed the present offense. On that date, the court appointed counsel for appellant, who waived arraignment and pled not guilty. During all proceedings in this case herein mentioned, appellant was represented by counsel. On November 23, 2016, a first amended complaint was filed alleging the present offense and that appellant suffered a prior felony conviction under the "Three Strikes" law, i.e., an October 25, 2007 first degree burglary conviction (case No. LA056421).

On November 23, 2016, the court called the case for a preliminary hearing. However, appellant's counsel asked if the court would give an indicated sentence. The prosecutor represented that witnesses would testify that, despite multiple

efforts to stop him, appellant fled down the street with the shopping cart, a store security officer pursued him but there was no contact between him and appellant, and, therefore, no robbery occurred. After discussing appellant's criminal record, the court stated its indicated sentence was 32 months in prison.

Appellant waived arraignment on the first amended complaint, pled not guilty and denied the allegations. Appellant said he desired to accept the indicated sentence. The People recounted the facts of the offense, represented that the value of the shopping cart alone was worth \$200, and objected to the court's indicated sentence. After appellant waived his constitutional rights, and the court advised him of the nature and consequences of his plea, appellant pled no contest as previously indicated and admitted the strike.² The court found appellant's plea and waivers were made knowingly, intelligently, freely and voluntarily, and there was a factual basis for the plea. The court accepted the plea, found appellant guilty on count 1, noted appellant's admission of the strike, and found true the strike allegation.

The court sentenced appellant to prison for 32 months, consisting of the low term of 16 months (§§ 487, subd. (a), 489, subd. (c), 1170, subd. (h)(1), (3)), doubled pursuant to the Three Strikes law (§ 667, subds. (d), (e)(1)). The court also awarded presentence credit and imposed various fines and fees. On January 13, 2017, appellant filed a notice of appeal.³

² Appellant's counsel asserted the plea was pursuant to *People v. West* (1970) 3 Cal.3d 595.

³ On May 5, 2017, appellant filed in the trial court, and the trial court granted, an ex parte motion asking the court to correct appellant's presentence credit award.

CONTENTIONS

After examination of the record, appointed appellate 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 22, 2017, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

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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STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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