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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ULISES SANDOVAL,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY

Respondent;

THE PEOPLE,

Real Party in Interest.

B278722

(Los Angeles County
Super. Ct. No. BA441570)

Petition for Writ of Mandate. Laura F. Priver, Judge.
Granted.

John F. Schuck, under appointment by the Court of Appeal,
for Petitioner.

No appearance for Respondent.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Real Party in Interest.

In his opening brief Ulises Sandoval (Sandoval) states: “This appeal follows the denial of a Penal Code section 1538.5 motion for return of property.”¹ The record shows, however, that the trial court never ruled on the motion. At the parties’ suggestion, we treat the appeal as a petition for writ of mandate. We grant the petition and direct the trial court to conduct further proceedings in order to rule on the motion.

BACKGROUND

On or about November 15, 2015, a security guard at a hospital found Sandoval inside a restricted storage area. Sandoval fled and was later apprehended. At the time of his apprehension, Sandoval was in possession of items belonging to the hospital. The instant case was apparently initiated on

¹ Penal Code section 1538.5, subdivision (a)(1) allows a defendant to “move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure” on the grounds specified.

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

November 18, 2015. Sandoval was released on bail on November 19, 2015.

While Sandoval was out on bail, on May 19, 2016, he was a passenger in a vehicle stopped by the police for an apparent traffic violation. A small amount of methamphetamine was found on Sandoval and he was arrested. Sandoval's arrest resulted in the revocation of his bail. According to Sandoval, no separate charges were filed as a result of this arrest.

On August 9, 2016, a formal information was filed in this case, charging Sandoval with two counts of second degree commercial burglary (§ 459), fleeing a pursuing peace officer's motor vehicle while driving recklessly (Veh. Code, § 2800.2), and driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a)). The information alleged that Sandoval had incurred three prior prison term convictions within the meaning of section 667.5, subdivision (b), and that he had incurred one prior serious or violent felony conviction within the meaning of section 667, subdivision (d), and section 1170.12, subdivision (b). Sandoval was arraigned on August 9, 2016, and pled not guilty.

At a pretrial hearing on September 6, 2016, at which Sandoval represented himself, he showed up with a handwritten, 12-page "Motion to Return Property Seized Without a Warrant Pursuant to Pen. C[ode] § 1538.5[, subdivision] (i)," seeking return of property that he claimed was illegally seized from him when he was arrested following the vehicle stop on May 19, 2016. His motion described the property as follows: (1) "2013th Ed Macbook Pro 13-inch laptop"; (2) "14K White Gold Diamond Engagement ring priced \$10,000 approx."; (3) "14K Gold Antique Men's Wristwatch"; (4) "Beige Camouflage Army Backpack, along with all personal contents included inside [and] inventoried"; and

(5) “3 Clear Tupperware containers containing antique fashion jewelry with the aggregate estimated value of \$2,000-\$3,000 U.S. dollars.”

During the September 6, 2016 hearing, the following discussion on Sandoval’s motion was held in court:

“THE [DEFENDANT]: Additionally on May 19th I was arrested by officers unidentified, and they didn’t give me any property receipt pursuant to Penal Code section 4003. I received nothing and my property was confiscated. I submitted a motion for return of property pursuant [to section] 1538.5. It is separate but I requested the discovery so I can allow the Court to make [a] factual determination on the [section] 1538.5 because I have no discovery whatsoever regarding the date I was arrested on May 19th. [¶] . . . [¶]

“THE COURT: Were you arrested? Detained and released?

“THE DEFENDANT: No, I was arrested.

“THE COURT: You were put in custody?

“THE DEFENDANT: Yes, I was. [¶] . . . [¶]

“THE COURT: You were out on bail until you were arrested?

“THE DEFENDANT: May 19th, yes, your Honor.

“THE COURT: What does it have to do with this case?

“THE DEFENDANT: Doesn’t relate to this case. It’s an unrelated matter but on the day I was arrested I received no property log sheet, no kind of receipt. All of my property was confiscated and I’m trying to get all my property back.

“THE COURT: Okay. Well, I’m going to be honest with you Mr. Sandoval. Through this case is not the means to do that, all right? So if it’s not related to this case they don’t have or not

going to be used in this case or somehow connected to this case, it is not going to be discovery as it relates to that but I don't know if [the prosecutor], out of the goodness in his heart, wants to look into that.

"[THE PROSECUTOR]: I'm going to say one step at a time. If it's all right let's see what we can do about meeting our responsibilities on this case. At the conclusion of this case, one way or another, then we'll work out all your other issues.

"THE DEFENDANT: Okay.

"THE COURT: Is that satisfactory?

"THE DEFENDANT: Yes, thank you."

Later in the hearing, the following colloquy regarding the section 1538.5 motion took place:

"THE COURT: Then the other motion it looks like you filed was that one we already talked about we are going to kind of set that aside for now.

"THE DEFENDANT: That's fine.

"THE COURT: Do you want it back?

"THE DEFENDANT: I have my own copy.

"THE COURT: Do you want us to file, actually file it in our case?

"THE DEFENDANT: Yes, I do. Thank you."

Subsequently, on October 4, 2016, pursuant to a plea agreement, Sandoval entered a plea of no contest to a single count, the Vehicle Code section 2800.2 evading charge (count 3), and admitted two prison priors. The remaining charges were dismissed. Sandoval was sentenced to five years in state prison.

On October 24, 2016, Sandoval filed in pro per a handwritten notice of appeal stating that he was appealing "from the judgment of the superior court in the above-entitled [case]

which was entered on, 9-09-16, based on the grounds involving [the] trial court erroneously denied, as a matter of law, defendant's motion for return of property pursuant to Penal Code section 1538.5[, subdivision] (i) taken from an illegal search & seizure."²

DISCUSSION

The People argue, and Sandoval concedes, that he should have proceeded by way of a petition for writ of mandate. "A motion for return of property is a separate procedure from the criminal trial and is not reviewable on an appeal from an ultimate judgment of conviction. [Citation.] If the 'separate proceeding' of a motion for return is regarded as a criminal proceeding, for which the right to appeal is governed by Penal Code section 1237, an order denying the motion is nonappealable because such an order is not listed among any of the matters for which an appeal is authorized by Penal Code section 1237. [Citations.] [¶] The proper avenue of redress is through a petition for writ of mandate, not an appeal." (*People v. Hopkins* (2009) 171 Cal.App.4th 305, 308; see also *People v. Gershenhorn* (1964) 225 Cal.App.2d 122, 125; *People v. \$25,000 United States Currency* (2005) 131 Cal.App.4th 127, 131–132.) Accordingly, we treat the appeal as a petition for writ of mandate.

The People further argue that, even assuming we treat the appeal as a petition, Sandoval has forfeited the issue by failing to renew his motion below. It is clear from the parties' discussion with the trial court at the hearing on September 6, 2016, that the matter would be addressed at a later date. The most recent minute order in the appellate record is from the sentencing hearing on October 4, 2016, and there is no mention of the

² The correct date of judgment is October 4, 2016.

motion. Nevertheless, because the trial court accepted Sandoval's motion for filing on September 6, 2016, we are disinclined to find forfeiture of the issue. If, upon further proceedings below, Sandoval can prove the existence of the allegedly seized property and that he is entitled to its return, he should be given such an opportunity. Thus, the petition for writ of mandate is granted.

DISPOSITION

The petition for writ of mandate is granted. The trial court is directed to conduct further proceedings on Sandoval's motion for return of property, filed on September 6, 2016, in order to rule on the motion.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT