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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN PATTON,

Defendant and Appellant.

B282689

(Los Angeles County
Super. Ct. No. VA099074)

APPEAL from an order of the Superior Court of Los Angeles County, Yvonne Sanchez, Judge. Affirmed.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jonathan Patton appeals from an order denying his petition for resentencing. His appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), requesting independent review of the record. We affirm the order.

FACTS¹

In July and August of 2006, Patton robbed five businesses of \$6,860. He used a gun to force the employees to empty the cash registers. He then ordered anyone in the store to lay down on the ground while he fled. He typically wore a baseball cap and a bandana to cover the bottom portion of his face. Patton robbed a video store in Hollywood on July 18, a McDonald's restaurant and a Dollar Store on August 8, a Jack in the Box restaurant on August 15, and a donut shop on August 19.

On August 15, Patton observed a female Jack in the Box employee using her cell phone outside the closed restaurant. He put her into a chokehold and held a gun to her head, forcing the other employees to open the door. He forced the manager to place money from the cash registers into a bag. He then ordered

¹ The statement of facts is derived from a probation report made confidential pursuant to Penal Code section 1203.05, which limits public access to the report 60 days after judgment is pronounced or probation is granted. However, Penal Code section 1203.05 is directed at personal information, which might ordinarily be confidential, rather than the nonpersonal information, such as the factual summary of an offense and the evaluations, analyses, calculations, and recommendations of the probation officer. (*People v. Connor* (2004) 115 Cal.App.4th 669, 696.) Thus, it is appropriate to rely on the probation report to provide a brief statement of facts. (*People v. Kelly* (2006) 40 Cal.4th 106, 110 (*Kelly*).)

the employees inside a freezer and closed the door, but kept the female employee with him. He then lifted up her shirt and fondled her breasts and “private area” while he held a gun to her head. He spoke to the victim, but she did not speak English. He forced the victim to lie down while he knelt beside her and lifted her shirt to massage her body. When she began to cry, he became angry and shouted at her. He then took the bag of money and ran out of the restaurant.

Patton was taken into custody on August 20 when Los Angeles County Sheriff’s Deputies noticed suspicious activity by Patton and two other individuals outside a fast food restaurant. The detectives uncovered a backpack containing a baseball batting glove, a cap, and a purple bandana.

Patton was charged with 17 counts of second degree robbery (Penal Code, § 211),² representing each of the 17 victims from the five businesses, and one count of sexual battery by restraint (§ 243.4, subd. (a)). As to all 17 counts of second degree robbery, the information alleged Patton used a deadly and dangerous weapon, a BB gun, within the meaning of section 12022, subdivision (b)(1). It was further alleged as to all counts that two factors in aggravation pursuant to California Rules of Court, rule 4.421, subdivision (a)(2) and (a)(8), justified imposition of the middle or upper terms of imprisonment.

Pursuant to a plea agreement, Patton pled no contest to 10 counts of second degree robbery and admitted the deadly weapon use allegation. He received a 15 year sentence, comprised of the upper term of five years for the base robbery count plus one year

² All further section references are to the Penal Code unless otherwise specified.

for the use enhancement plus nine consecutive one year sentences (1/3 the mid-term) on the remaining robbery counts.

On April 28, 2017, Patton filed a petition for resentencing pursuant to Proposition 57. He contended his second degree robbery offenses were reclassified under Proposition 57 to misdemeanors pursuant to section 1170.18, subdivision (c). The trial court denied the petition for resentencing on the ground there is no resentencing option under Proposition 57 because it only provides an inmate who has completed his base term with a hearing before the Board of Parole Hearings. (Cal. Cost., art. I, § 32, subd. (a).)³

Patton timely appealed.

DISCUSSION

We appointed counsel to represent Patton on appeal. Appointed counsel filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d at page 436, requesting independent review of the record on appeal for arguable issues. We then notified Patton by letter that he could submit any claim, argument, or issues that he wished our court to review. We have received no response from Patton. We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled her duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 436; *Kelly, supra*, 40 Cal.4th at p. 106.)

³ Proposition 57 amended article I, section 32 of the California Constitution governing the consideration of parole and the earning of behavior credits in state prison. It also eliminated the People's ability to directly file charges against a juvenile defendant in Adult Court. (*People v. Superior Court (Walker)* (2017) 12 Cal.App.5th 687, 694–697.)

DISPOSITION

The order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.