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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.

JAMES RAYMOND RACHAL,

Defendant and Appellant.

B276533

(Los Angeles County
Super. Ct. No. SA069814)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Dohi, Judge. Dismissed.

Jeffrey J. Gale, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant James Raymond Rachal appeals from his conviction for second degree commercial burglary. Upon review of the record, we have determined that this conviction was dismissed by the trial court at the request of the prosecution. We therefore dismiss this appeal.¹

BACKGROUND

Defendant was charged in an amended information with one count of second degree commercial burglary (Pen. Code, § 459)² (count 1), two counts of having a concealed firearm in a vehicle (former § 12025, subd. (a)(1)) (counts 2 & 3), two counts of attempted grand theft (§§ 487, subd. (a), 664) (counts 4 & 5), four counts of grand theft (§ 487, subd. (a)) (counts 6-9), and one count of unauthorized possession of keys to a public building (§ 469) (count 10). A jury convicted defendant of counts 1, 3, 4, 5, 6, and 7. The jury acquitted defendant on counts 8 and 10, and could not reach a verdict on counts 2 and 9. The court granted the prosecution's motion to dismiss counts 2 and 9.

Defendant moved for a new trial, arguing, among other things, that there was insufficient evidence to support the conviction for count 1, burglary. At the hearing on the motion, the parties informed the court that they had reached an agreement and the prosecution would concede as to count 1. At the sentencing hearing on July 22, 2016, the court imposed sentences for counts 3 through 7. The court granted the prosecution's motion to dismiss the sole remaining count, count 1.

¹ We requested supplemental briefing on this issue pursuant to Government Code section 68081. Defendant did not respond to our request.

² All further statutory references are to the Penal Code.

The minute order from the hearing did not match the oral pronouncement, however, and indicated that a sentence had been imposed for count 1 as well as counts 3 through 7.

Defendant timely appealed.

DISCUSSION

The only issue raised by defendant in this appeal is a challenge to his conviction on count 1, burglary. The reporter's transcript makes clear that this conviction was dismissed, although this is not reflected in the minute order from the sentencing hearing. "Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) Thus, irrespective of the minute order, count 1 has been dismissed. Because defendant does not otherwise challenge his convictions or sentence, there is no basis for this appeal.

DISPOSITION

The appeal is dismissed. The trial court is directed to correct the minute order from the July 22, 2016 proceedings to reflect that count 1 has been dismissed.

FLIER, Acting P. J.

WE CONCUR:

GRIMES, J.

SORTINO, J.*

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