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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.

JOSE MANUEL MARQUEZ,

Defendant and Appellant.

B243457

(Los Angeles County
Super. Ct. No. KA095373)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Geanene M. Yriarte, Judge. Affirmed.

Kimberly Howland Meyer, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Jose Marquez of felony petty theft with three prior theft-related convictions, and second degree commercial burglary. (See Pen. Code, §§ 666, subd. (a); 459.)¹ Marquez admitted multiple prior convictions. The trial court struck the prior convictions in the interest of justice and sentenced Marquez to a term of 16 months in county jail, with credit for 345 including 173 actual days in custody, and 172 days of conduct credit. We affirm.

FACTS

The Crimes

Marquez and another man whom Marquez later named as “Marvin” drove in one vehicle to a Walmart store in the City of Industry. They entered the store. Marquez got a shopping cart as Marvin pulled a yellow safety vest from under his shirt and put it on. The two men separated. Joseph Gomez, a loss prevention officer monitoring the store’s video surveillance cameras, saw Marvin put on the vest and became suspicious. Gomez left his office to surveil Marquez, and alerted two other loss prevention officers to surveil Marvin. Marquez put shampoo in the cart, then went to the home furnishings department where he placed a blanket in the cart. Marquez then walked to the electronics department, where he put a DVD player into the cart. Marquez then milled around the electronics department for 5-7 minutes until rejoined by Marvin. Marvin, who by this time was no longer wearing the yellow vest, put various articles of clothing in the cart. Marvin took a stereo system from a floor display and put it in the cart. Marquez then stepped away from the cart, and Marvin began to push it through the store. The men walked around the perimeter of the store, taking the longest possible route toward the exit. They passed manned cash registers near the exit. Marquez then left the store first, followed at some distance by the Marvin, still pushing the cart. They made no attempt to pay for the items in the cart.

¹ All section references are to the Penal Code.

Just outside the store exit, Gomez and his partners grabbed the cart, and displayed their badges. When Gomez said they wanted to talk with the men about the unpaid items in the cart, Marvin became belligerent, swore at the employees, and walked away. No one attempted to stop him. Marquez cooperated and agreed to accompany the employees to the store office. Once in the office, Marquez said he hadn't taken anything. The items in the shopping cart were inventoried, and valued at \$347.66.

Deputy Sheriff Christopher Gamboa responded to the scene. Marquez waived his *Miranda*² rights. He initially said that he had not stolen anything, then said that his friend, "Marvin," had stolen the items, then admitted he had stolen the items. Marquez did not give any more information about Marvin; Marquez said he did not know Marvin's last name or where he lived. When Officer Gamboa told Marquez that a surveillance camera showed him putting items in the cart and walking out of the store without paying for anything, which constituted stealing, Marquez responded by saying something to the effect, "If you call that stealing." Deputy Gamboa arrested Marquez. While transporting Marquez to the station, Marquez asked if he could call his girlfriend. Officer Gamboa's training officer, Deputy Meza, dialed the number on Marquez's phone, and put the call on speaker. During the phone call Officer Gamboa heard Marquez say, "I fucked up and stole some shit. Please bail me out."

The Criminal Case

In November 2011, the People filed an information charging Marquez with one count of felony petty theft with three prior theft-related convictions, and one count of second degree commercial burglary. (§ 666, subd. (a); 459.) The information alleged that Marquez was ineligible for probation under section 1203, subdivision (e)(4), based on eight prior felony convictions. Further, the information alleged that four of the prior convictions suffered by Marquez included a prison term. (§ 667.5, subd. (b).)³

² *Miranda v. Arizona* (1966) 384 U.S. 436

³ Allegations that one of Marquez's prior convictions qualified as a prior strike and prior serious felony were stricken at the time Marquez admitted his priors and are not an issue on appeal.

The charges were tried to a jury in February 2012. Walmart employee Gomez and Deputy Sheriff Gamboa testified for the prosecution; their testimony established the facts summarized above. Marquez did not present any defense evidence; his defense counsel argued to the jury that the evidence showed Marquez “didn’t do anything wrong” in that it showed he “didn’t steal anything.” He argued it was Marvin who pushed the items out of the store, and the evidence did not show that Marquez aided and abetted Marvin. The jury convicted Marquez of the charged offenses.

Marquez later admitted all eight prior convictions alleged in the information. At sentencing on August 15, 2012, the trial court struck all four prior convictions with a prison term, and sentenced Marquez to the low term of 16 months for the felony petty theft, and imposed and stayed an upper term of three years as to the commercial burglary.

Marquez filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Marquez on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting that this court review the record on appeal for arguable issues. We thereafter notified Marquez by letter that he could submit any claim, argument or issues which he wished us to review. Marquez has not responded to our letter.

We have independently reviewed the record on appeal, and are satisfied that Marquez’s appointed counsel fulfilled her duty, and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.