

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KENT LESOPRAVSKY,

Defendant and Appellant.

B284478

(Los Angeles County  
Super. Ct. No. MA070047)

THE COURT:\*

Defendant and appellant Kent Lesopravsky (appellant) appeals the judgment entered following a jury trial in which he was convicted of one count of escape while working outside prison in violation of Penal Code section 4530.<sup>1</sup> After denying

---

\* LUI, P. J.,      ASHMANN-GERST, J.,      CHAVEZ, J.

<sup>1</sup> Undesignated statutory references are to the Penal Code.

appellant's *Romero*<sup>2</sup> motion to strike the prior serious felony allegation, the trial court sentenced appellant to an aggregate term of six years in state prison, consisting of the upper term of three years, doubled for the strike under section 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). Appellant received 21 days' custody credit and 20 days' good time/work time credit, for a total of 41 days' credit.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. Appellant filed his own letter briefs, in propria persona.

After consideration of appellant's arguments and examination of the entire record, we are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

### **FACTUAL BACKGROUND**

From August 5, 2015, until November 3, 2015, appellant was serving a prison sentence at Fenner Canyon Fire Conservation Camp, a minimum-security state prison facility. Volunteer state prison inmates are carefully screened for eligibility for placement at the camp, and receive 80 hours of training as wildland firefighters at the Sierra Conservation Center. In addition to firefighting, work assignments in national forests and on city and county lands include weed abatement,

---

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

trail maintenance, fire prevention, trash clean-up, and post-fire rehabilitation and restoration.

At the beginning of a work day inmates receive their work assignments and are given an orientation regarding the safety boundaries and perimeters of the worksite. Before the inmates board the bus headed to the work site, each inmate is identified and a roll call conducted. The inmates are spot checked for contraband and appropriate attire, which consists of bright orange clothing with “CDCR PRISONER” stenciled on the leg and back. Another count is taken on the bus.

On November 4, 2015, appellant reported for work on a weed abatement project for flood control in the City of Highland in San Bernardino. After a two-hour bus ride from camp to the work site, the 11 inmates in appellant’s crew were briefed about the project and informed of the work site boundaries. At 12:30 p.m. and again at 12:45 p.m., the commander conducted a headcount, accounting for all the inmates in appellant’s crew. The commander then walked back about 200 feet to move the bus. The project was finished about 15 minutes later, and the inmates boarded the bus. The commander conducted another count, and found appellant was missing. Searches of the area failed to locate appellant. At 10:45 p.m., the area search procedures were cancelled, a statewide warrant for appellant was issued, and the matter was turned over to a special unit to continue the escape investigation.

On November 10, 2015, agents located appellant in the lobby of a spa near downtown Los Angeles. It was appellant’s second visit to the spa, which was nearly a two-hour drive from the fire camp worksite in Highland. Appellant appeared surprised to see the officers, but did not attempt to flee. Officers

searched appellant, and recovered various items including a wallet, \$58 in cash, a AAA card bearing appellant's name, an interim driver's license, appellant's CDCR inmate card, a condom, and a cell phone.

Appellant "was not a problem inmate," and there had never been any issues or concerns about him. Before his flight on November 4, 2015, appellant had been on the same crew for several months and had given no indication that he might try to escape. About a month before he disappeared, appellant had been granted a seven-hour release to attend his mother's funeral. A family member escorted him from the camp, and he returned without incident. Appellant never reported any harassment, threats, or safety concerns.

Appellant denied that he ever intended to escape from fire camp. He testified that he was separated from his work crew at the site on November 4, 2015, and thought the crew had returned to camp without him. Appellant was unfamiliar with the area, and was unable to contact anyone from his crew, headquarters or the camp. Jerry Vasquez, a former inmate appellant knew from prison, picked appellant up in his truck. After failing to locate the crew and the bus, they unsuccessfully looked for headquarters. On the way back to the camp, Vasquez's truck ran out of gas, and having no money, Vasquez called someone to try to get appellant a ride back to camp. Vasquez wanted to use drugs that night, and the person who responded to Vasquez's call was engaged in criminal activity in which appellant wanted no part. Instead of returning to camp, appellant got dropped off in North Hollywood.

Appellant was aware that a manhunt was underway and his picture was in the media. Although he continued to look for a

way to get back to camp, he was also trying to keep safe and avoid getting shot or killed. Looking for a place of safety, appellant went first to the Hollywood police station. But the person who took him there did not want to be involved, and instead took appellant to an upscale spa where he waited for camp officials to pick him up.

## DISCUSSION

Appellant asserts numerous claims<sup>3</sup> of error in his letter briefs. We find none of them persuasive.

*1. Ineffective assistance of trial counsel and prosecutorial misconduct related to a 32-month settlement offer*

Throughout the proceedings below, appellant sought to settle the case for 32 months in prison. The district attorney repeatedly rejected such a plea agreement, offering five years instead. Appellant contends that his trial counsel was ineffective for failing to secure a 32-month deal, and/or the district attorney committed misconduct in refusing to accept the settlement offer. Appellant seems to base his claims on a settlement offer the district attorney purportedly made before dismissing and refiling the case on January 19, 2017. However, no such settlement offer appears in the record of the proceedings below that are the subject of this appeal. Accordingly, the alleged settlement offer, and trial counsel's conduct or advice with respect to such an offer, presents no reviewable issue in this appeal.

---

<sup>3</sup> Some of defendant's arguments appear directed toward alleged injustices arising out of a case pending in another division of this court: *People v. Lesopravsky* (Div. 3, B281733). The remainder of appellant's claims are indecipherable.

In any event, the People are neither required to offer a plea bargain to a defendant, nor does a defendant have any constitutional or statutory right to a settlement offer from the People. (*Weatherford v. Bursey* (1977) 429 U.S. 545, 561.) Appellant's claims with respect to the failure to reach a plea agreement for 32 months are without merit.

*2. Insufficiency of the evidence to support the conviction and the trial court's finding of the strike prior*

Appellant seems to challenge the sufficiency of the evidence supporting his conviction under section 4530, subdivision (b) by claiming there was no evidence he was a "willing participant," and/or was "anywhere unlawfully." In order to convict appellant of this offense, the jury had to find: "1. The defendant was a prisoner confined in a state prison, [¶] 2. The defendant was working as an inmate outside or away from the state prison under the custody of prison officials, officers or employees, and [¶] 3. The defendant escaped from the lawful custody of the prison officials, officers or employees while engaged in work at the work site." (CALJIC No. 7.30.) Contrary to appellant's assertion, each of these elements finds overwhelming support in the evidence presented at trial, including appellant's own trial testimony.

Appellant also challenges the sufficiency of the evidence in support of the trial court's true finding on the strike prior, a 1994 residential burglary. As he asserted below, appellant insists that the records presented—notably a certified "969(b) packet" and a certified criminal history or "rap sheet"—are false, inaccurate, and fail to establish he suffered this conviction. We are unconvinced.

The record reflects that the trial court carefully reviewed the documents and heard testimony from appellant disputing the accuracy of the records. As fact-finder, the court was entitled to accept the accuracy and authenticity of the certified records, and reject as not credible appellant's testimony that he did not enter a plea to the burglary charge. (*People v. Woods* (1999) 21 Cal.4th 668, 673 ["As the finder of fact . . . the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences" in making its findings]; *People v. Tully* (2012) 54 Cal.4th 952, 979.)

### 3. Sentencing issues

Appellant contends that inaccuracies in the prison records resulted in incorrect credit calculations. Appellant fails to identify any inaccuracies that caused a credit miscalculation, nor do we find any irregularity in the award of credits.

As the trial court noted at sentencing, during the trial in this matter, appellant was still serving his eight-year sentence in Los Angeles Superior Court case No. PA077147. He was paroled in that case on June 22, 2017, but remained in custody on the current charge. Based on these circumstances, the court correctly calculated appellant's credits from the date of his parole—June 22, 2017—to and including the date of the probation and sentencing hearing—July 12, 2017. Because section 4530, subdivision (b) mandates that any sentence "be served consecutively," appellant was not entitled to credits in this case for time he was already serving on his sentence in case No. PA077147.

Appellant also maintains that his sentence in this case should run concurrent with the eight-year sentence in Los

Angeles Superior Court case No. PA077147. This argument is also contrary to the express requirement that any sentence for violation of section 4530, subdivision (b) “be served consecutively.”

*4. Instructional error*

Appellant complains that the trial court gave erroneous jury instructions on self-defense and necessity. The trial court correctly instructed on the defense of necessity, based on CALJIC No. 4.44. However, no instruction on self-defense was warranted because there was no evidence to support a self-defense theory.

*5. Denial of appellant’s right to counsel of his choosing, and abuse of discretion in denying appellant’s requests for continuances to proceed in pro. per. or to secure other counsel*

Appellant brought two *Marsden*<sup>4</sup> motions, and sought to represent himself in pro. per. on multiple occasions throughout the trial. In closed proceedings, the trial court heard appellant’s complaints about his attorney’s representation and denied his requests for new counsel, based on findings that any deterioration in the relationship with counsel was due to appellant’s attitude and not any problem with counsel’s representation.

As for appellant’s *Faretta*<sup>5</sup> motions, each time appellant sought to represent himself, the trial court indicated a willingness to grant the request if appellant was prepared to proceed without a continuance. But each time, appellant stated he would need more time to prepare and to conduct further

---

<sup>4</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

<sup>5</sup> *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).



investigation. In addition, appellant indicated that he only wanted to represent himself as to certain portions of the trial, while retaining his attorney for the rest of the trial. The trial court concluded appellant's *Faretta* requests were equivocal and made for purposes of delay.

We review the trial court's denial of the *Marsden* motions for abuse of discretion. (*People v. Streeter* (2012) 54 Cal.4th 205, 230.) We apply the same standard of review to the denial of a *Faretta* motion based on a finding that the motion was made for purposes of delay or disruption. (*People v. Burton* (1989) 48 Cal.3d 843, 854; *People v. Welch* (1999) 20 Cal.4th 701, 735.) Applying that standard here, we conclude that the trial court properly exercised its discretion in denying appellant's unfounded *Marsden* motions and his untimely and equivocal *Faretta* requests.

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.