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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

IRVING RUBEN URBINA,

Defendant and Appellant.

A133126

(Humboldt County
Super. Ct. No. CR1007414B)

Irving Ruben Urbina appeals from a judgment imposed upon his guilty plea to home invasion robbery (Pen. Code, §§ 211, 213, subd. (a)(1)(A)) and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)). His counsel raises no issues and asks this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant filed a supplemental brief and contends that his counsel was ineffective in representing him during sentencing and that the court committed sentencing errors. We affirm.

On December 30, 2010, a complaint was filed charging defendant with three counts of home invasion robbery, one count of possession of a firearm by a felon, and several serious felony allegations. The charges stemmed from defendant's involvement with Theron Chiles, a codefendant, in a home invasion robbery of a residence in Humboldt County where defendant and Chiles brandished firearms at an 18-year old male at the residence, and stole numerous firearms from a gun safe.

On March 29, 2011, a preliminary hearing in the codefendant's matter was held. On May 18, 2011, defendant waived his right to a preliminary hearing. The court granted

the prosecutor's motion to file a first amended complaint which charged defendant with an additional 14 counts of grand theft of a firearm in violation of Penal Code section 487, subdivision (d)(2) and one count of possession of ammunition (Pen. Code, § 12316, subd. (b)(1) repealed by Stats.2010, ch. 711, now see Pen. Code, § 30305, subd. (a)(1)).

On May 25, 2011, defendant pled guilty to one count of home invasion robbery and one count of possession of a firearm by a felon. The plea was entered with the understanding that the court could sentence defendant to a term of nine years and eight months in state prison.

On July 6, 2011, the court sentenced defendant to the upper term of nine years on the home invasion robbery and a consecutive eight months on the firearm possession count. The court awarded 92 days of custody credits.

In his supplemental brief, defendant argues that his defense counsel was ineffective because he failed to submit a statement in mitigation. He also argues that the court failed to consider letters he submitted at the sentencing hearing.

While a defendant may submit a statement in mitigation “[a]t least four days prior to the time set for imposition of judgment” (Pen. Code, § 1170, subd. (b)), defense counsel is not required to prepare one. Here, defendant proffered letters to the court on the day of sentencing. During his remarks at the hearing, defense counsel referred to the letters and a certificate of AA meetings defendant had attended in his argument in support of a low term. We must presume that the court was aware of the letters and the certificate. (See Evid. Code, § 664 [official duty presumed to be regularly performed].)

Defendant also argues that the court failed to state reasons for imposing the aggravated term. Defendant forfeited this claim because he failed to object in the trial court. (*People v. Scott* (1994) 9 Cal.4th 331, 356.) In any event, while the record is not clear on which factors the court relied upon in imposing the aggravated term, the court's remarks at the hearing indicate that in imposing the sentence, it relied on the fact that defendant was armed, he suffered a prior conviction, he was on probation at the time of the offense, and that he was in possession of a shotgun shell in his pocket. Resentencing, on these facts, is not required. It is not reasonably probable that the court would have

imposed a more favorable sentence absent the error or had counsel interposed an objection. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Defendant was represented by counsel. This court has reviewed the entire record and there are no meritorious issues to be argued.

The judgment is affirmed.

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.