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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CESPREGI POINDEXTER,

Defendant and Appellant.

A133131

(Contra Costa County
Super. Ct. No. 51106095)

Cespregi Poindexter appeals from a judgment upon a jury verdict convicting him of one count of second degree robbery. His court-appointed counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 to determine whether there are any arguable issues on appeal. Poindexter has also filed a brief asserting a claim of possible error. After considering Poindexter's brief and following our independent review of the entire record, we affirm.

FACTUAL BACKGROUND

The victim testified that on December 16, 2010, he went to a park in Antioch to sell some marijuana to Poindexter, whom he knew as Marcus or Jay Money from previous drug deals. When the victim asked Poindexter if he had the money to make the purchase, Poindexter pulled a gun. He instructed the victim to hand over whatever he had and his cell phone. Rather than turn over the phone, the victim took a swing at Poindexter. He heard four gunshots and realized that Poindexter had fired. The victim was shot in the shoulder and the left side of his face. He underwent two surgeries and

was hospitalized for 11 days. The victim identified Poindexter in a photo lineup shortly after he was released from the hospital. When he was first interviewed by police, the victim did not disclose that he was injured during a drug transaction.

Poindexter testified that it was his friend, Frank Carter, not he, who shot the victim. Poindexter and Carter were living together at Poindexter's home, and the two decided to try and obtain marijuana from the victim using counterfeit money. If the counterfeit money did not work, the plan was to take the marijuana by force. Poindexter did not know Carter was armed. Carter approached the victim, and Poindexter could not tell whether they exchanged any words when he heard gunfire. Carter and Poindexter ran in one direction and the victim ran off in another. Poindexter did not know the victim had been shot, and tried to reach him by phone after the incident to see if he was all right. When they got to his house, Poindexter learned that Carter was armed.

Poindexter's account was corroborated by his mother who testified that Carter was living at her home, and that he moved out shortly before Christmas 2010. Various eyewitnesses corroborated Poindexter's testimony to the extent that they saw more than one apparent perpetrator fleeing from the scene, or heard the victim claim that he was attacked by more than one person.

PROCEDURAL BACKGROUND

By information Poindexter was charged with attempted murder and second degree robbery, each enhanced due to his alleged use of a firearm. The case was called for jury trial after his plea of not guilty, and tried over seven days. The jury returned a verdict of not guilty on the attempted murder charge and determined the firearm enhancements were not proven, but Poindexter was found guilty of second degree robbery. He was sentenced to the upper term of five years on the basis that the robbery involved great bodily injury, a vulnerable victim and Poindexter took a lead role in its planning and commission. He was assessed appropriate fines and fees. This appeal is timely.

DISCUSSION

In his supplemental brief, Poindexter claims that several disadvantages attendant to his sentencing as a violent offender are improper. Most significantly, he says he is

improperly subject to the 15 percent worktime credit limitation provided in California Penal Code¹ section 2933.1 and he was not considered for probation. Poindexter bases his argument on his claims that he was factually innocent of the actual shooting and that he did not know his accomplice was armed or would shoot the victim. Thus, he concludes, he is not a violent offender.

This issue is normally raised by writ of habeas corpus. (See *In re Monigold* (1983) 139 Cal.App.3d 485, 494, *In re Joyner* (1989) 48 Cal.3d 487, 490–491.) But since Poindexter claims his classification as a violent felon may have affected his eligibility for probation, we will address it. Poindexter’s credit earning eligibility was discussed at his sentencing hearing. There, the court acknowledged, after the issue was raised by defense counsel, that robbery is a violent felony listed in section 667.5 that limits Poindexter’s credit earning capability. Because he was convicted of robbery, Poindexter may only earn 15 percent worktime credit as provided by section 2933.1. Poindexter’s classification as a violent felon is not due to the specific acts that led to his conviction. Rather, it is due to the fact that he was convicted of robbery, a violent felony listed in section 667.5, subdivision (c)(9).

Poindexter was properly represented by counsel at all stages of the proceedings, and our review of the entire record discloses no error. Poindexter has also been advised of his right to request that counsel be relieved. No issue requires further briefing.

¹ All subsequent statutory references are to the Penal Code.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.