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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.

FRANK MARANO SULLIVAN,

Defendant and Appellant.

A133784

(Sonoma County  
Super. Ct. No. SCR 593297)

Defendant Frank Marano Sullivan appeals from the judgment and sentence imposed following his guilty pleas on eight counts of second-degree burglary, in violation of Penal Code, section 459.<sup>1</sup> Defendant's appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requests that we conduct an independent review of the record. Defendant was informed of his right to file a supplemental brief and did not file such a brief. (See *People v. Kelly* (2006) 40 Cal.4th 106, 124.) We have conducted the review requested by appellate counsel and, finding no arguable issues, affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

During October and November 2010, defendant gained entry to a number of commercial establishments by posing as a fire sprinkler system inspector or installer who needed to inspect the premises. When left alone for purposes of the "inspection,"

<sup>1</sup> Further references are to the Penal Code unless otherwise noted.

defendant rifled through employees' purses and wallets and stole personal information, credit cards and checks, which he subsequently used to purchase goods and services.

Defendant was apprehended on November 28, 2010, after he was discovered by an employee in the Tres Hombres restaurant and claimed to be inspecting the sprinkler system. The employee asked to see a business card and defendant replied his card was in his vehicle. The employee followed defendant outside, at which point defendant dropped a purse concealed under his jacket. Defendant immediately fled the scene on foot. The employee then saw a white Toyota 4Runner stop, pick up defendant and drive off. The employee provided a license plate number for the Toyota and described defendant as a white male adult, 270 pounds, wearing a white T-shirt, blue jeans and a blue Cal Fire hat. Police found the Toyota parked a block away from the Tres Hombres restaurant and apprehended defendant and the driver of the Toyota. At an in-field show-up, the Tres Hombres employee identified defendant as the man who stole the purse from the restaurant.

In April 2011, the Sonoma County District Attorney (DA) filed an information charging defendant with eight counts of second-degree burglary of different business establishments, in violation of section 459 (counts I, II, III, IV, V, VII, XI and XII). The DA also charged defendant with two counts of grand theft, in violation of section 487, subdivision (a) (counts VI and IX) and two counts of receiving stolen property, in violation of section 496, subdivision (a) (counts VIII and X). Further, the DA alleged defendant had suffered two prior prison convictions, within the meaning of section 667.5, subdivision (b), and two prior strikes for purposes of the Three Strikes Law, pursuant to section 1170.12.

During the course of the parties' attempts to resolve the matter by plea bargain, defendant rejected different prosecution offers, one of eleven years and one of seven years and eight months. At a hearing in June 2011, defendant's counsel expressed

defendant's hope for an offer involving one-strike with leave to file a *Romero*<sup>2</sup> motion, opening the possibility defendant could obtain a probationary sentence and enter a residential drug treatment program, should the court grant the *Romero* motion. Upon defendant's waiver of speedy trial rights, the trial court continued the matter to allow further plea negotiations.

Subsequently, defendant appeared with counsel at a change of plea hearing on August 5, 2011. Defense counsel informed the court that defendant was appearing in a wheelchair for the first time because he experienced an "anxiety attack" shortly before the hearing. Counsel stated he had talked to defendant about whether to proceed with the hearing and then advised the court, "I feel comfortable proceeding." Whereupon, the court inquired, "And importantly, Mr. Sullivan, do you feel capable of proceeding?" Defendant replied, "Yes, I do" and declined the court's offer of "additional time before we proceed with this matter."

Addressing defendant, the court stated it had received a four-page plea form indicating defendant's willingness to plead guilty to certain of the felony charges in the information and to admit one prior strike conviction of first-degree burglary in 2005 in return for dismissal of all remaining charges, dismissal of a second strike conviction allegation and dismissal of two prior prison conviction allegations. Defendant stated he understood the maximum sentence he faced for the felonies and allegation he intended to admit was fifteen years and four months, and that he had received no indication from the court as to what his actual sentence would be.

Thereafter, the court read the charge on each count of second-degree burglary, stating the date of the offense and the establishment that was burglarized. After the court read each charge, the court confirmed defendant understood the charge and had no

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<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504 (holding that a trial court may utilize section 1385 to strike or vacate a prior strike for purposes of sentencing under the three strikes law, "subject, however, to strict compliance with the provisions of [Penal Code] section 1385 and to review for abuse of discretion".)

questions in that regard. The court also read out the details of the prior strike allegation and defendant confirmed he understood the allegation and had no questions about it.

The court also confirmed defendant had initialed and signed the plea form with a full understanding of its contents after reading it and discussing it with his attorney. Defendant stated he wished to waive each and all the constitutional rights described in the plea form except for representation of counsel. The court found defendant's waiver of constitutional rights was knowingly, voluntarily and intelligently given. Defendant confirmed he had received no promises concerning his sentence except that the maximum sentence could be fifteen years and four months. Defendant affirmed he felt "confident in going forward at this time" and had no questions to ask privately of his attorney at that moment. Thereafter, the court received defendant's guilty plea on each of eight counts of second-degree burglary, as well as defendant's admission to the prior strike offense. Defense counsel joined in the pleas and stipulated to a factual basis for the crimes based on the applicable police reports. The court accepted "each and all of the pleas and the admission as to the prior strike conviction," stated "the pleas and admission are freely and voluntarily made," found defendant guilty beyond a reasonable doubt on counts I-V, VII, XI and XII, and found the strike allegation true. Also, before setting the matter for sentencing, the court granted the prosecutor's motion to strike the allegations of a 1985 strike prior and two prison priors, and dismiss the balance of the felony charges.

A sentencing hearing was held on October 28, 2011. As an initial matter, the court heard argument of counsel on defendant's *Romero* motion. The court stated for purposes of the *Romero* motion it considered the nature and circumstances of the present felonies, prior serious felonies, and the particulars of defendant's background, character and prospects. The court found that "based upon all the considerations before the court, . . . defendant's conduct falls squarely within the letter and spirit of the three strikes law." Accordingly, the court denied the *Romero* motion, adding, "I feel it would be an abuse of discretion to decide otherwise."

Proceeding to sentencing, the court noted defendant was statutorily precluded from receiving probation based on his prior strike offense, pursuant to section 1170.12,

subdivision (a)(2). The court imposed the aggravated term of six years on count I due to the planning and sophistication involved in the crimes, defendant's numerous prior convictions, his prior prison terms and prior unsatisfactory performance on grants of probation and parole. On each of the remaining seven counts, the court imposed consecutive terms of 16 months, being one-third of the mid-term of four years. The court imposed consecutive sentences pursuant to section 1170.12, subdivision (a)(6) and California Rule of Court, rule 4.425(a)(3), on the grounds that each of the crimes was committed at a different time and place. The total sentence imposed by the court was fifteen years and four months. The abstract of judgment filed on November 9, 2011, reflects the court's oral pronouncement of judgment. Defense counsel filed a notice of appeal on November 14, 2011, appealing the sentence imposed. Defendant filed an amended notice of appeal on November 28, 2011, challenging the validity of the plea and requesting a certificate of probable cause. The trial court granted the request for a certificate of probable cause.

#### **DISCUSSION**

As noted, the trial court granted defendant's request for a certificate of probable cause (CPC). The CPC asserts: (1) At his arraignment defendant was offered a plea of nine years but he was so physically, mentally and emotionally drained from prolonged drug use that he was "in a state of acute psychosis," did not understand any of procedures in the courtroom and lost the opportunity of a nine-year sentence; (2) during his crime spree which resulted in the offenses of conviction, defendant "was suffering such physical and psychological dependence" that he was "depersonalized to the point of a form of insanity" and did not understand the consequences of his actions; (3) trial counsel was ineffective because he failed to accede to defendant's and his family's request for a psychiatric evaluation so that the court could understand defendant's mental state at the time he committed the crimes.

As noted above, defendant's appellate counsel filed a *Wende* brief after finding no arguable issues to brief. We offered defendant the opportunity to file a personal supplemental brief, but he has not done so and has offered no legal argument or authority

in support of the assertions in the CPC. Having independently reviewed the record, we conclude the CPC raises no arguable issues. The assertions set forth in the CPC appear to relate to matters antecedent to entry of defendant's guilty pleas. Accordingly, any cognizable issues arising from the assertions in the CPC are waived. (*People v. Kaanehe* (1977) 19 Cal.3d 1, 9 [“Other than search and seizure issues which are specifically made reviewable by [Penal Code] section 1538.5, subdivision (m), all errors arising prior to entry of a guilty plea are waived, except those which question the jurisdiction or legality of the proceedings resulting in the plea (Citation.)”].) To the extent the assertions in the CPC constitute a claim that defendant did not knowingly and voluntarily plead guilty (see *People v. Voit* (2011) 200 Cal.App.4th 1353, 1364-1365 [“Among the issues that can be raised after a guilty plea is whether the defendant knowingly, voluntarily, and intelligently waived his or her rights in entering the plea (Citations.)”]), any such claim is belied by the record, which, as set forth above, clearly demonstrates to the contrary. We recognize that our review is not limited to the particular issues listed in defendant's request for a certificate of probable cause. (See *People v. Hoffard* (1995) 10 Cal.4th 1170, 1178.) However, having examined the entire record, we are satisfied that appointed counsel has fully complied with his responsibilities and that no other arguable issues exist. (*People v. Kelly, supra*, 40 Cal.4th at p. 124; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

**DISPOSITION**

The judgment is affirmed.

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Pollak, J.