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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD M. COLOMBO,

Defendant and Appellant.

A134604

(San Mateo County
Super. Ct. No. SCO70827A)

Appellant Robert M. Colombo appeals from a judgment of conviction, entered on the basis of a jury verdict, of grand theft (Pen. Code, § 487, subd. (a))¹ and writing a check on an account with insufficient funds. (§ 476a, subd. (a).) His court appointed counsel has filed a brief raising no legal issues and requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

STATEMENT OF THE CASE

On April 30, 2010, the District Attorney of San Mateo County filed a two count information charging appellant with felony grand theft (§ 487, subd. (a)) and passing a bad check. (§ 476a, subd. (a).) Both offenses related to a single incident: that appellant delivered a check in the amount of \$3600, drawn on a closed Wells Fargo bank account, to Marta Cisneros, dba Colma Auto Body Shop, to retrieve his car from storage. The information further alleged four prior felony convictions within the meaning of

¹ All statutory references are to the Penal Code.

section 1203, subdivision (e)(4), and that appellant had served two separate terms for prior felony convictions pursuant to section 667.5.

On May 4, appellant plead not guilty to both charges.

On November 8, 2010, the date set for trial, appellant moved to postpone the trial to obtain additional time within which to hire his own attorney. The motion was denied as untimely and trial commenced two days later, on November 10.

After the jury returned a verdict finding him guilty of both charged offenses, appellant waived trial on the alleged prior convictions, and the court found true the first and second alleged in connection with the grand theft charge, and struck the remaining allegations.

The sentencing hearing was held more than a year later, on January 6, 2012, because appellant was during the interim tried in the San Mateo County Superior Court and convicted in another case. (No. SCO73839A)

At a consolidated sentencing hearing, appellant was sentenced to three years eight months in the other case, plus two years community supervision, and to a consecutive sentence of one-third the midterm, or eight months, on the grand theft in the present case. Sentence on the remaining bad check charge in this case was stayed, apparently under section 654. Appellant received credit for 120 days time served, plus 120 days for good time/work credits, for a total of 240 days. No restitution was ordered because after appellant was arrested, and before he was sentenced, he reimbursed Marta Cisneros the amount of the bad check.

On February 7, 2012, appellant filed a timely notice of appeal in this case.

FACTS

Marta Cisneros, owner of the Colma Auto Body Shop, was contacted by appellant while he was in jail and agreed to accept his 2001 Mustang convertible for storage and repairs. After the vehicle was brought to her shop by a towing company on May 4, 2009, Cisneros sent appellant an estimate of the cost of repairs. Because appellant was the cellmate of Cisneros's son, she agreed to forgo some of the storage charges. Appellant sent Cisneros a letter authorizing the work. Cisneros asked for a down payment, and

appellant and his girlfriend, promised to provide one. However, the only money Cisneros received was \$290 from the girlfriend to pay the cost of storing the vehicle. Cisneros nevertheless continued to work on the vehicle.

Cisneros's estimate for completing the repair job was \$3904.60, but she gave appellant a "discount" reducing the cost to \$3600. On August 21, 2009, appellant appeared at her shop with a personal check for \$3600 payable to Colma Auto Body Shop. Although she had previously asked for payment in the form of a cashier's check, Cisneros accepted the personal check. Two days later, when she tried to cash it at Wells Fargo Bank, Cisneros was told that appellant's checking account had previously been closed. Cisneros phoned appellant about 10 times during the next several days but none were returned.

Shauntel Gould, the Wells Fargo "financial crimes investigator," testified to the balances in appellant's checking account between January and August 2009. The account started out in January with a balance of \$484.95. In July it had a negative balance of minus \$96.48. On June 10 appellant was sent an insufficient funds notice. On August 10, eleven days before appellant gave Cisneros his personal check for \$3600, the bank closed the account.

Appellant testified in his own defense. Except for a brief period in April, appellant was confined in jail from late February of 2009 until his release in August of that year, shortly before he delivered his check to Cisneros. He received no mail while in jail. When appellant left jail in August 2009, he thought his checking account contained about \$3000, because he had deposited \$1000 in the account in December 2008 and his brother had been depositing \$400 per month, which was appellant's share of the monthly rent from tenants of a house he and his brother had inherited from their mother. Although appellant had a post office box, he didn't check it in the first few days after he was released from jail in August 2009, and was therefore unaware his checking account had been closed. Appellant testified that Cisneros and he never discussed a cashier's check. He believed that the money he had in the account, together with the discount Cisneros's son promised he'd receive, and additional help from his family would be

sufficient to cover the cost of repairing his car. Appellant intended to pay Cisneros the amount he owed her, but was instructed by his attorney not to contact her.

The sentencing report of the probation officer acknowledged that appellant's offenses ordinarily would not warrant a prison commitment, but "the totality of his criminal record and continued abuse of methamphetamine does." In the opinion of the probation officer, appellant "is an extremely poor candidate for probation consideration. He has failed to benefit from the many prior opportunities he has had on grants of supervisory probation to make positive changes." The probation officer felt appellant was not genuinely remorseful, his record "indicates a pattern of regular and increasingly serious criminal conduct," he was on a grant of felony probation when the present crimes were committed, he has served a prior prison term, and his prior performance on probation and parole was unsatisfactory.

DISCUSSION

Nothing in the record suggests appellant was not mentally competent to stand trial.

Appellant was at all times represented by able counsel who protected his rights and interests.

No material evidence was received by the court that was legally inadmissible and objected to nor was any admissible evidence impermissibly excluded over objection.

No instructional error was claimed nor is any shown by the record.

The verdict is supported by substantial evidence.

The sentence imposed is authorized by law.

Our independent review having revealed no arguable issues that require further briefing, the judgment of conviction and sentence are affirmed.

Kline, P.J.

We concur:

Lambden, J.

Richman, J.