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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.

CALVIN L. DUNSTON,

Defendant and Appellant.

A138959

(Alameda County
Super. Ct. No. SC169265)

Defendant Calvin L. Dunston was sentenced to 20 years in state prison after he pleaded no contest to one count of first degree residential burglary and admitted three prior serious felonies and one prison prior. Defendant has appealed, and his counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asking us to independently review the record to determine if there are any arguable issues that require briefing. Counsel advised defendant of his right to file a supplemental brief, but he has elected not to do so.

We have reviewed the entire record and conclude there are no arguable issues. Accordingly, we affirm.

As taken from the transcript of the preliminary hearing, just after midnight on July 31, 2011, 81-year-old Nancy Fahey was asleep in her upstairs bedroom at her home on Fruitvale Avenue in Oakland. Around 12:15 a.m., she was awakened by the sound of glass breaking downstairs. Fahey got up, retrieved her glasses from a bathroom down the hall, and went into a second bedroom to get a telephone. Telephone in hand, she was walking back down the hall when she spotted a man going through a chest of drawers in

the bedroom where she had been sleeping. She saw him first from the side, but when she made a noise, he turned toward her and she saw him face-on. With light coming from both a convenience store outside and the nearby bathroom, Fahey could see that the intruder was a slender, Black man wearing a dark, hooded sweatshirt and standing approximately six feet tall. He had very “[w]ide open” eyes and a “bony structure” to his face and was either bald or had his hair cut very short. Fahey estimated he was in his late 30’s.

The man said something unintelligible to Fahey, and she went into the bathroom, locked the door, and called the police, who responded within a matter of minutes.

After taking a report, the officers left. They returned an hour later, however, and drove Fahey to a location a few blocks from her house. Defendant was in police custody, standing in front of a police car with lights shining on him. Fahey was “pretty positive” he was the man who broke into her house. At the preliminary hearing, she again identified defendant as the intruder. She also testified that nothing had been taken from her home.

Around 1:05 a.m. that same morning, Teona Campbell, her young son, and her roommate were asleep in their bottom floor apartment on 26th Avenue in Oakland. Campbell was awakened by the sound of somebody rifling through a dresser in her bedroom, just a few feet from where she and her son were sleeping. Thinking it was her roommate and without opening her eyes, she asked, “What are you doing?” When a male voice responded, “Oh, I’m leaving now,” she opened her eyes and saw a man going through her dresser. He walked out of the room and the apartment, closing the front door behind him.

Because the intruder had been illuminated by the light coming from a television that was on in the room, Campbell was able to see that he was a dark skinned Black man wearing a black hoodie, blue jeans, and white sneakers. He had a short haircut, “like a bald head,” and “really big” eyes. She estimated that he was six feet, two or three inches tall and approximately 40 years old. After he left, she noticed that a five dollar bill that had been on top of the television in the bedroom was missing.

The police arrived within minutes of being called. After Campbell reported what had happened, she was driven to a location about four blocks from her house where the police had defendant in custody. She was “sure” he was the man who broke into her house. At the preliminary hearing, Campbell again identified defendant as the intruder.

By information dated July 9, 2012, defendant was charged with two felony counts of first degree residential burglary in violation of Penal Code section 459, both of which were alleged to be violent felonies within the meaning of Penal Code section 667.5, subdivision (c). As to count one, it was specially alleged that defendant committed a violent crime on an elderly person (Pen. Code, § 667.9, subd. (b)), and as to both counts, it was alleged that another person (not an accomplice) was present during the burglary. (Pen. Code, § 667.5 subd. (c)(21).) The information also alleged that defendant had multiple strikes, 11 prior convictions, five of which were serious, and three prison priors.

On July 11, 2012, defendant entered a plea of not guilty to the charges against him. He later sought to change his plea, attempting to enter a “dual plea,” whereby, as he described it, he would plead not guilty but if he was found guilty, he would plead not guilty by reason of insanity. The matter was continued for the preparation of reports by two court-appointed alienists. Both doctors subsequently opined that defendant was sane at the time the offenses were committed.

On September 21, 2012, defendant petitioned to proceed in propria persona pursuant to *Faretta v. California* (1975) 422 U.S. 806. After questioning defendant regarding his competence and understanding, the court granted his request. Four months later, defendant requested permission to revoke his pro per status, and he was reassigned a public defender.

On March 25, 2013, pursuant to a negotiated disposition, defendant changed his plea, pleading no contest to one burglary charge as a serious felony and strike and admitting the first three serious priors and one prison prior. The maximum sentence was 20 years, for which he would be “half-time eligible.” The second burglary charge was dismissed, as were all remaining special allegations.

On April 23, 2013, defendant was sentenced to the midterm of four years on the burglary charge, five consecutive years on each of the three serious priors, and one consecutive year on the prison prior, for an aggregate term in state prison of 20 years. He was also ordered to pay numerous fines and fees.

On June 4, 2013, defendant filed a notice of appeal. He requested a certificate of probable cause on the ground of a “violation of Sixth Amendment right to ineffective [sic] assistance of counsel.” The request was denied on June 11, 2013.

Pursuant to our obligations under *People v. Wende*, *supra*, 25 Cal.3d 436, we have reviewed the entire record. The scope of reviewable issues on appeal after a plea of no contest, however, is very limited. It is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895–896.)

Defendant’s change of plea complied with *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122.

Defendant was represented by competent counsel who guarded his rights and interests. On April 4, 2012, defendant sought to have his counsel removed and new counsel appointed pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The court conducted a thorough inquiry and denied the motion, finding that counsel had “properly been representing” defendant and noting that any difficulties in the relationship “ha[d] been occasioned by [defendant’s] willful refusal to communicate.” There was no abuse of discretion in the denial of the motion. (*People v. Earp* (1999) 20 Cal.4th 826, 876.)

Additionally, for a period of approximately four months, defendant was self-represented. The court did not abuse its discretion in granting defendant’s petition to proceed in propria persona (*People v. Rudd* (1998) 63 Cal.App.4th 620, 625–626), and it properly reassigned counsel when defendant revoked his in propria persona status.

The sentence imposed is authorized by law.

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed.

Richman, J.

We concur:

Kline, P.J.

Haerle, J.