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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.

ISIAH DESEAN SIMMONS,

Defendant and Appellant.

A143776

(Sonoma County
Super. Ct. No. SCR643150)

Isiah Desean Simmons appeals from a judgment upon his plea of no contest to second degree robbery (Pen. Code,¹ § 211) with the admission that he suffered a prior serious or violent felony conviction within the meaning of the Three Strikes law (§1170.12). 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 was apprised of his right to file a supplemental brief, but did not do so.

On November 22, 2013, a felony complaint was filed charging defendant with discharging a firearm at an occupied motor vehicle (§ 246 (count one)); assault with a semiautomatic firearm (§ 245, subd. (b) (count two)); robbery (§ 211 (count three)); and illegal possession of a firearm (§ 29800, subd. (a)(1) (count four)). The complaint further alleged as to counts one, two, and four that defendant personally used a firearm (§§ 12022.5, subd. (a), 1203.06, subd. (a)(1)), and as to count three, it alleged a firearm

¹ All further statutory references are to the Penal Code.

use sentencing enhancement, punishable by 20 years (§ 12022.53, subd. (c)). As to all counts, the complaint alleged that defendant suffered a prior strike conviction (§ 1170.12).

The charges stemmed from an incident in which Daniel Garber met defendant in defendant's car to complete a sale in which defendant was to purchase three pounds of marijuana. Before Garber could complete the transaction, defendant's companion, who was in the driver's seat, brandished a gun at him. Garber became frightened and fled, leaving the marijuana in the back seat of defendant's car. Shortly thereafter, Garber got in his car and engaged in a high speed chase with defendant. Garber purposely rear ended defendant's car; defendant then fired a gun in Garber's direction. Garber drove his car away, but defendant pursued him and fired another two shots.

On May 14, 2014, the trial court granted the People's motion to amend the complaint to add count five, charging second degree robbery with a prior strike conviction. Defendant pled no contest to count five with the understanding that the court would dismiss the remaining counts of the complaint in exchange for a stipulated term of 10 years.

On June 18, 2014, defendant filed a *Marsden*² motion. The court did not rule on the motion because defendant's then-counsel had been retained. The court appointed the public defender to represent defendant.

On October 15, 2014, defendant filed a motion to withdraw his plea on the ground that due to his learning disability, he did not understand that he would receive a 10-year prison sentence. The trial court denied the motion, reasoning that defendant's waiver form as well as the record of the change of plea hearing clearly indicated that defendant understood he was entering into a negotiated disposition of 10 years.

On December 4, 2014, the trial court sentenced defendant to 10 years pursuant to the negotiated disposition—the upper term of five years for the robbery, doubled pursuant to the Three Strikes law. The court awarded defendant credits of 290 days.

² *People v. Marsden* (1970) 2 Cal.3d 118.

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.

Streeter, J.