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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GLENN ALLEN GEARHART, JR.,

Defendant and Appellant.

B235180

(Los Angeles County
Super. Ct. No. MA050139)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Tanya Dellaca, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Glenn Allen Gearhart, Jr. appeals from the judgment entered following his plea of no contest to possession of morphine for the purpose of sale (Health & Saf. Code, § 11351) and his admission that he previously had suffered a conviction for manslaughter (Pen. Code, § 192) within the meaning of the Three Strikes law (Pen. Code, § 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)). The trial court sentenced Gearhart to four years in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

At approximately 1:00 a.m. on August 22, 2010, Lancaster Deputy Sheriff David Pittack was on patrol near 711 West Jackman Street. Pittack and other deputies had received a call indicating that there was a burglary in progress there.

When he arrived at the Jackman Street address, Pittack saw Gearhart in the area. Pittack detained Gearhart and, after discovering that he had a felony warrant outstanding for his arrest, transported him to the Lancaster Sheriff's station to be booked. While booking Gearhart, Pittack found "a black Oakley sack containing three plastic bags of pills" tied to the inside waistband of his shorts. Each bag contained different kinds of pill: morphine, Xanax and Dilaudid.

Gearhart told Pittack that both the shorts and the pills belonged to his girlfriend. Although Pittack suspected he knew what the pills consisted of, he "called poison control to identify exactly what the pills were." After describing the size, color and imprint on the pills to the poison control operator, Pittack verified that they were in fact morphine, Dilaudid and Xanax. He then charged Gearhart with "being in possession of narcotics inside the jail." Pittack explained: "[Gearhart] had them in his possession as he entered the jail. There's a sign posted as you walk into the jail facility in plain view stating that it's a violation of law to bring any type of narcotics into the facility." In addition, Pittack was of the opinion that Gearhart possessed the narcotics for the purpose of sale. Pittack based his opinion on the fact that Gearhart possessed more pills than one would generally

¹ The facts have been taken from the transcript of the preliminary hearing.

have for personal use, that the pills were “individually packaged” and that Gearhart did not have a prescription for them.²

2. Procedural history.

Following the preliminary hearing, on September 24, 2010, the prosecutor filed an information charging Gearhart with three counts of bringing a controlled substance into a prison or jail (Pen. Code, § 4573), three counts of the unauthorized possession of a controlled substance in a prison or jail (Pen. Code, § 4573.6), two counts of possession for sale of a controlled substance (Health & Saf. Code, § 11351) and possession for sale of alprazolam (Health & Saf. Code, § 11375, subd. (b)(1)). It was further alleged with regard to counts 1 to 9 that Gearhart had previously suffered a conviction for manslaughter (Pen. Code, § 192) within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)); that he had served a prison term (Pen. Code, § 667.5, subd. (b)); and that he was precluded from obtaining a grant of probation (Pen. Code, § 1203, subd. (e)(4)) as he had previously been convicted of manslaughter (Pen. Code, § 192), possession of a firearm by a felon (former Pen. Code, § 12021) and the sale or transportation of a controlled substance (Health & Saf. Code, § 11379). Finally, it was alleged with regard to counts 7 and 8, that Gearhart’s sentence should be enhanced pursuant to Health and Safety Code section 11370.2, subdivision (a) due to the fact that he had previously been convicted of the sale or transportation of narcotics in violation of Health and Safety Code section 11379.

On October 1, 2010, Gearhart filled out a form indicating he wished to proceed in propria persona. In completing the form, Gearhart acknowledged that he had a right to an attorney, a right to a speedy trial, a right to a jury trial, a right to subpoena witnesses and records, a right to confront and cross-examine witnesses, a right against self-incrimination, a right to be released on bail, and a right to self representation. After the 36-year-old Gearhart indicated that he recognized the “many dangers and disadvantages

² It was stipulated for purposes of the preliminary hearing that Gearhart possessed 20 tablets of hydromorphone, 42 tablets of morphine and 22 tablets of alprazolam.

in representing [him]self” and that he understood that it was the “advice and recommendation of [the] Court that [he] not represent [him]self and that he accept court-appointed counsel,” Gearhart nevertheless signed the form indicating that he was “freely and voluntarily [giving] up [his] right to have a lawyer represent [him].” Although the trial court recognized Gearhart’s waiver of the right to counsel, it appointed “stand-by counsel” and granted Gearhart’s motion for an investigator and “pro per funds” in the amount of \$40.

After approximately one month, on October 25, 2010, Gearhart indicated that he wished to “relinquish [his] pro per status and have counsel appointed.” The trial court granted Gearhart’s request and appointed stand-by counsel as counsel of record.

On June 13, 2011, after noting that it was day 13 of 30, the trial court addressed counsel and indicated that it understood the parties had reached a disposition in the matter. The prosecutor responded that Gearhart had agreed to plead to count 7 and admit his strike. He would be sentenced to two years in prison for count 7 and the term would be doubled to four years pursuant to the Three Strikes law. The People would then move to dismiss the remaining counts and allegations.

After reviewing Gearhart’s probation report, the trial court asked Gearhart if he wished to “take advantage of this offer from the prosecution[.]” When Gearhart indicated that he wanted to enter the plea, the trial court asked him if he wished to waive his right to a jury or court trial, the right to confront and cross-examine the witnesses against him, the right to present a defense, including the right to use the subpoena power of the court to procure witnesses and evidence on his behalf, and his right to remain silent. Gearhart indicated that he was willing to give up each of these rights and, in addition, that he was willing to admit the allegation that he had previously suffered a “strike.”

Before taking his plea, the trial court asked Gearhart if he understood that, if he was on parole or probation, the plea would place him in violation of that parole or probation, that if he were not a citizen of the United States, his plea would lead to deportation and that, once he had completed his prison term, he would be placed on parole for a period of three years. With regard to fines and fees, the trial court indicated

that Gearhart would be ordered to pay an \$800 restitution fine (Pen. Code, § 1202.4, subd. (b)), a stayed \$800 parole revocation restitution fine (Pen. Code, § 1202.45), a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373) and a \$50 crime laboratory analysis fee (Health & Saf. Code, § 11372.5).

After indicating that he understood the terms of the plea, Gearhart pled no contest to “count number seven, a violation of Health and Safety Code section 11351[,] . . . possession for sale of a controlled substance.” Gearhart then admitted that he previously had suffered a conviction for manslaughter (Pen. Code, § 192) within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)). The trial court found that Gearhart’s “plea and his admission [had been] freely and voluntarily made with an understanding of the nature and consequences thereof.” The court found that there was “a factual basis for the plea and the admission based on counsel’s stipulation. [The court] accept[ed] [Gearhart’s] plea of no contest and his admission and [found] him guilty thereon.”

The trial court sentenced Gearhart to the low term of two years in state prison for his conviction of possession for sale of a controlled substance, then doubled the term to four years pursuant to the Three Strikes law. Gearhart was awarded presentence custody credit for 296 days actually served and 198 days of good time/work time, for a total of 494 days. When the People then moved to dismiss all remaining counts and allegations, the trial court granted the motion.

Gearhart filed a timely notice of appeal on August 11, 2011. The trial court denied Gearhart’s motion for a certificate of probable cause filed the same day. In his request for a certificate, Gearhart had asserted that he had entered his plea under duress, that his trial counsel had been ineffective and that his investigator had failed to “do [his] job[] properly.”

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed February 9, 2012, the clerk of this court advised Gearhart to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.