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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL CAVAZOS,

Defendant and Appellant.

B236537

(Los Angeles County  
Super. Ct. No. BA368344)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Jose I. Sandoval, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Rafael Cavazos appeals from the judgment following his guilty plea to three counts of second degree robbery (Pen. Code, § 211)<sup>1</sup> with use of a firearm (§ 12022.53, subd. (b)), for which he was sentenced to a term of 12 years in prison. We affirm the judgment.

## **PROCEDURAL AND FACTUAL BACKGROUND**

### *Charges*

By information, appellant, along with codefendants Hagop Leoyian and Maribel Colindres (not parties to this appeal), was charged with a series of second degree robberies against taxi cab drivers (§ 211). Appellant alone was charged in count 1; he and Leoyian were jointly charged in counts 2 and 4; Leoyian and Colindres were charged in count 3; and Leoyian alone was charged in count 5. It was alleged that appellant and Leoyian each personally used a handgun in the counts against them (except for count 5 against Leoyian) (§ 12022.53, subd. (b)), and that in counts 2 and 3 a principal was armed with a firearm (§ 12022, subd. (a)(1)).

### *Evidence*

Because appellant pled guilty before any evidence was introduced at trial, we take our summary of the evidence of the charges against him from the preliminary hearing transcript.

On February 10, 2010, around 10:01 p.m., taxi driver Fernando Gonzalez picked up two male passengers, one of whom he identified as appellant, at a building on South Cloverdale in Los Angeles. Appellant sat next to him in the front seat and the other man sat in the back seat. They asked him to drive them to

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

Tamarind and Carlos Way. Once there, appellant put a gun to Gonzalez' head while the man in the rear held a knife to the back of his neck. The men demanded money. Gonzalez handed appellant money, two cell phones, credit cards and his driver's license.

Two days later, on February 12, 2010, around 2:00 a.m., Luis Diaz was operating a bandit taxi cab. He picked up two passengers, a male and a female, at 28th Street and Figueroa in Los Angeles. The male, whom Diaz identified as Leoyian, sat in the front seat and the female in the rear. Once they reached the destination, Leoyian pulled a handgun, pointed it at Diaz, threatened to shoot, and demanded money. Another male, whom Diaz identified as appellant, appeared from outside the vehicle, opened the driver's door and demanded Diaz' cell phone, wallet, and money. Diaz handed the items to appellant. The two men then fled on foot.

Six days later, on February 18, 2010, around 11:50 p.m., taxi driver Roberto Hernandez picked up two males at Selma and Cahuenga in Hollywood. One of the men, whom Hernandez identified as appellant, sat next to him in front, and the other man sat in the back seat. Hernandez drove them to Carlitos and Tamarind, where both men produced handguns and appellant asked where the money was. Hernandez gave appellant his wallet, after which the men ran off.

### *Plea*

The prosecution offered the three defendants a "package deal" whereby appellant and Leoyian would receive a 12-year sentence and Colindres would receive a 3-year sentence. Because Colindres refused the offer, counsel for appellant and Leoyian asked the court, during jury selection, to allow their clients to plead to all charges against them, in exchange for a 12-year sentence. The court

agreed. Appellant's counsel stated that he had discussed it with appellant, and appellant understood that he would be convicted of three strike offenses in the disposition. Thereafter, as here relevant, appellant pled guilty to second degree robbery in counts 1, 2, and 4 and admitted that he personally used a firearm in those crimes. As part of the plea, he was advised that the crimes to which he was pleading were strikes, and he also admitted a specific factual basis for each count.

On the date set for sentencing, appellant's attorney stated that "apparently" he did not make clear enough to appellant "the implications" of the plea, and appellant wanted to consult another attorney. The court continued the sentencing date. On the next scheduled date, appellant elected to represent himself, and thereafter he filed a motion to set aside the plea on the ground that his attorney was ineffective for failing to advise him that he would be pleading to three strike offenses. At the hearing on the motion, defendant called his former attorney as a witness. The attorney testified that he had advised defendant that he was pleading "open" to the court, that he would receive three strikes, and that he would be sentenced to 12 years. The trial court denied the motion, and sentenced defendant to 12 years in state prison. Defendant received a certificate of probable cause.

## **DISCUSSION**

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. Appellant filed a supplemental brief in which he contends that his counsel was ineffective for not advising him that he would be pleading to three strikes, and he contends that his attorney lied in his testimony in the trial court. However, in ruling on the motion to set aside the plea, the trial court credited his attorney's testimony that he advised appellant that he

would be pleading to three strikes, and we cannot set aside that credibility finding on appeal.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

### **DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.