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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHERISTY K. CLEVELAND,

Defendant and Appellant.

B236810

(Los Angeles County
Super. Ct. No. MA051908)

THE COURT:*

Cheristy K. Cleveland (defendant) appeals from the judgment entered following her plea of no contest to one count of residential burglary in violation of Penal Code¹ section 459 (count 11); one count of transportation of a controlled substance (methamphetamine) in violation of Health and Safety Code section 11379, subdivision (a) (count 9); and one count of subornation of perjury in violation of section 127. Defendant admitted a 2009 prior conviction of violating Health and Safety Code section 11378. Pursuant to the plea negotiation, the trial court sentenced defendant to the high

* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

term of six years for the burglary; a consecutive term of one year (one-third the midterm) for the transportation of a controlled substance; a concurrent term of one year for the subornation of perjury (count 4); and a consecutive three years for the drug-related prior within the meaning of Health and Safety Code section 11370.2, subdivision (c).

Defendant filed a notice of appeal stating that she was pressured into taking the plea deal, and she pleaded to a charge on which she was never arraigned and that never took place. The trial court granted defendant's request for a certificate of probable cause.

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an "Opening Brief" containing an acknowledgment that he had been unable to find any arguable issues. On February 27, 2012, we advised defendant that she had 30 days within which to personally submit any contentions or issues that she wished us to consider. No response has been received to date.

On February 1, 2011, the Los Angeles Sheriff's Department stopped defendant for a vehicle code violation.² A consensual search of her person yielded \$974 in cash and an "8 ball" of methamphetamine. The sum of \$1,100 was found in her wallet, and three cell phones were in her car. She insisted the narcotics were for her personal use. Defendant's outgoing calls from jail were monitored. Defendant and her codefendant discussed a plan to create an excuse for the large sums of money in defendant's possession. As part of the plan, the codefendant was to create a fraudulent bill of sale to show that defendant sold a motorcycle for \$950 to her codefendant the day before her arrest.

Defendant was charged with subornation of perjury by declaration (§ 127) (count 4); offering false evidence (§ 132) (count 5); preparing false documentary evidence (§ 134) (count 6); conspiracy to commit the crime of methamphetamine sales (§ 182, subd. (a)(1), Health & Saf. Code, § 11379) (count 7); conspiracy to commit the crime of subornation of perjury (§§ 182, subd. (a)(1), 127 (count 8); transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) (count 9); and possession for sale of a

² Because defendant and her codefendant waived their preliminary hearings, the facts are gleaned from defendant's probation report.

controlled substance (Health & Saf. Code, § 11378) (count 10). It was alleged that defendant suffered four prior prison terms within the meaning of section 667.5, subdivision (b). It was alleged that defendant suffered three prior drug-related convictions within the meaning of Health and Safety Code section 11370.2, subdivision (c). Defendant's maximum sentence was over 20 years.

On the day defendant waived her preliminary hearing, the prosecution offered defendant a sentence of 12 years. The prosecutor stated the offer would remain open until the first pretrial proceeding so that she would have time to think about it. The prosecutor noted that defendant had been held to answer in another case in which she was in pretrial status. The 12 years would be fashioned to include that case as well as a charge of filing a false police report of an assault that the prosecutor had planned to file.

On the day the case was called for jury trial, defendant rejected the 12-year plea bargain. Voir dire of prospective jurors took place on August 31 and September 1, 2011, and defendant again rejected the plea offer. After the jury panel was sworn and pre-instructed, the trial court and the parties again discussed a possible resolution.

Defendant's counsel told the court that defendant wished to consider the offer and speak to her family about it. On the following day, the trial court stated that the prosecution was offering defendant 10 years. The People proposed adding a count 11 of residential burglary committed on or about January 31, 2011, for the agreed-upon high term of six years. Defendant would also plead to count 9 for a consecutive one-year term and would admit to one drug prior for an additional three years. Defendant was informed that the residential burglary was a strike offense and that it would double any future felony sentencing should she reoffend.

Defendant agreed to the bargain, but then expressed her concern about the effect of a theft offense on obtaining future employment. The trial court told defendant it could not make any promises in that regard, and it was something she needed to be aware of. Defendant then asked about the effect of her prior convictions on her sentence should she be found guilty after a trial. The prosecutor explained the proof he was able to produce,

and the trial court explained the limits of its discretion in that regard. The trial court told defendant she did not have to accept the offer, and the prosecutor again offered the 12-year plea bargain without the burglary. The trial court told defendant it would accept either bargain. The trial court gave defendant time to confer with her attorney.

Defendant asked for more time to think about it and asked the trial court to “quash” or not call the waiting jury. The trial court replied that defendant had been given time to think about it overnight but gave her some more time to confer with counsel. Defendant still expressed uncertainty as to which offer was better. The prosecutor explained again that if defendant was going to engage in the same conduct after serving her sentence, she would receive a double sentence. Defendant said she would take the 10 years.

Defendant finally pleaded no contest to the two offenses agreed upon and admitted the prior drug conviction. Counsel joined in the plea and admissions within the meaning of *People v. West* (1970) 3 Cal.3d 595 and stipulated to a factual basis based upon review of defendant’s criminal record, documents regarding defendant’s prior prison terms, and review of the incident reports. The remaining counts and allegations were dismissed. The trial court accepted the plea, found there was a factual basis, and found the plea had been entered into freely and voluntarily with an understanding of the nature and consequences of the plea.

We have examined the entire record and we are satisfied that defendant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) The record shows that defendant was informed of the burglary charge and provided with an opportunity to enter a plea. (§ 988.) In addition, the record contains nothing to indicate the trial court erred in finding there was a valid factual basis for defendant’s plea.

The judgment is affirmed.

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