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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CORY A. BRIM,

Defendant and Appellant.

B241573

(Los Angeles County
Super. Ct. No. MA054201)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Hayden A. Zacky, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Cory Brim pleaded no contest to two counts of dissuading a witness. He appeals from his sentence of five years, the maximum sentence authorized by law. He contends the trial court abused its discretion by denying probation and imposing the maximum term. We affirm.

FACTS

Defendant's stepbrother was accused of robbing two people in Bakersfield. After the stepbrother's arrest, the two robbery victims were harassed and fled to Lancaster where they moved into a new home. In an apparent attempt to prevent the victims from testifying against his stepbrother, defendant and an accomplice undertook to discover the victims' new address. After learning where the victims lived, appellant and his accomplice rented a car and, equipped with stocking hats, gloves, and a firearm, drove to the residence. The victims were home at 11:30 p.m. when defendant and his accomplice cut electrical power to the house, throwing it into darkness. Peering outside, the victims saw defendant and his accomplice, one of whom was holding a gun, standing near the house's "power switch." The victims called the police, who arrested both men shortly thereafter.

Defendant entered an open plea to the charge of dissuading a witness. (Pen. Code, § 136.1(c)(1).) At sentencing, several character witnesses testified on defendant's behalf. His grandmother, grandfather, and mother testified that he had lived with them since birth. He had been diagnosed in the second grade with dyslexia and attention deficit order, and his learning disabilities troubled him growing up. His father had abused the family and neglected defendant. Nevertheless, defendant had, according to his character witnesses, grown to be a reliable and gentle person.

Defendant's employer also testified on his behalf. Before his arrest, defendant had been employed by a security company. A felony conviction would have jeopardized his employment as a security guard, but defendant's supervisor testified that he would retain defendant in another role if probation were granted. A Los Angeles Police Department gang officer whose son, a close friend of defendant's, was killed by a gang member,

testified that defendant had been like a son to him and that he would continue to mentor him if probation were granted. Defendant also apologized to the one victim in attendance.

In opposition to defendant's character witnesses, one of defendant's victims spoke about how defendant's crimes had forced the victim to change his residence (which the prosecutor noted had required appellant and his accomplice to locate the victim's new home), affected his school work in college, and caused his family to live in fear every day. Despite defendant's courtroom apology to the victim, the victim asked the court to impose the maximum sentence on defendant.

After the witnesses completed their statements, the trial court stated it had read the probation department's report and defendant's sentencing memorandum. On the record before it, the court found that the sentencing factors in aggravation outweighed those in mitigation. The court observed that defendant had committed his offenses of threatening witnesses from his own free will and volition, and those threats undermined the justice system. The court also noted that defendant and his accomplice had tried to conceal their own identities from their victims by wearing gloves and stocking hats, and had rented a car to drive to the victims' home, thus showing sophistication and planning. Additionally, the court noted that the victims were especially vulnerable because they were home at night with a small child when defendant and his accomplice cut the electric power to the house, casting the house into darkness. A firearm was also used in the commission of the crime. The court thus denied probation and sentenced defendant to the maximum term of four years on count one plus one year (one-third the midterm) on count two. The sentences were ordered to run consecutively.

Defendant filed a timely appeal. He argues that mitigating factors outweigh aggravating factors and that imposing a maximum sentence for an accomplice with no prior convictions constituted an abuse of the court's discretion.

DISCUSSION

A. *The Standard of Review is Abuse of Discretion*

When a court relies on aggravating circumstances to sentence a defendant to the high term, the defendant must show upon appeal that the court abused its discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847 [“Even with the broad discretion afforded a trial court under the amended sentencing scheme, its sentencing decision will be subject to review for abuse of discretion.”].) An abuse of discretion is a decision so irrational or arbitrary that no reasonable person could agree with it. (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) So long as the trial court’s decision was guided by applicable legal principles and policies, its decision will not be disturbed. (*Ibid.*)

B. *Imposition of the Upper Term and Denial of Probation Was Not an Abuse of Discretion.*

In sentencing determinations, a single aggravating circumstance supported by sufficient evidence permits the court to exercise its discretion to choose the upper term. (*People v. Black* (2007) 41 Cal.4th 799, 813.) An aggravating circumstance is one that makes the offense “distinctively worse than the ordinary.” (*Id.* at p. 817.) Aggravating circumstances are listed in the California Rules of Court and include factors such as the vulnerability of the victim, and an indication that the crime required planning, sophistication, or professionalism. (California Rules of Court, rule 4.421(a)(3), (6) & (8) [the list is not exhaustive (rule 4.421(c))].)

Here, the court cited as aggravating factors the planning that went into the crime and the presence of a child inside the victim’s home when the electric power was cut, making the victims especially vulnerable. Each factor was supported by the evidence. Defendant and his stepbrother took the time to find the victims’ location, rented a car – presumably to cover their tracks – and tried to conceal their identity during the crime. When the victims spotted them, defendant and his brother had just cut off the power to

the house and were armed with a gun.¹ Their purpose was to dissuade the victims from testifying, and one victim testified at the hearing that his family indeed lived in fear. Because the aggravating factors are supported on the record, it cannot be said that the sentencing decision was clearly arbitrary or capricious. It was based on reasoned judgment and complied with applicable sentencing rules, and was therefore not an abuse of discretion.

Defendant contends that mitigating factors outweighed the aggravating factors identified by the court, and thus denying probation and imposing the upper term was error. This same argument, however, was rejected in *Black*. (*See People v. Black, supra*, 41 Cal.4th at p. 814.) Under the determinate sentencing law, the presence of one aggravating circumstance supports a trial court decision to impose an upper term sentence. (*Id.* at p. 815.) Given the factors before the court, the court had discretion to choose the low, mid, or high term. The court clearly articulated the reasons for its decision, and its judgment may not be overturned even if reasonable people might disagree. (*People v. Preyer* (1985) 164 Cal.App.3d 568, 573.)

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

¹ While the victim did not explicitly testify to seeing defendant holding the gun, the presence of the weapon nevertheless made the victim vulnerable.