

Filed 10/14/16 P. v. Johnson CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY JOHNSON,

Defendant and Appellant.

B267206

(Los Angeles County
Super. Ct. No. BA432022)

APPEAL from a judgment of the Superior Court of Los Angeles County, William N. Sterling, Judge. Affirmed.

Karen Hunter Bird, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The District Attorney charged defendant and appellant Anthony Johnson (defendant) with one count of possession of cocaine base for sale in violation of Health and Safety Code section 11351.5.¹ The information against defendant further alleged he had suffered three prior felony convictions within the meaning of Penal Code section 667, subdivisions (b) through (i) and 1170.12 (the Three Strikes law) and two prior sales-related narcotics convictions within the meaning of section 11370.2, subdivision (a).

Briefly described, the charges against defendant were predicated on the following evidence. Los Angeles Police Department (LAPD) Officer Henry Merin observed defendant engage in what he believed to be hand-to-hand drug transactions on a street corner in Los Angeles. Specifically, on March 5, 2014, Merin observed two instances in which a person handed defendant green paper that appeared to be money. Once defendant received the paper, he and the buyer would walk down Brighton Avenue, disappear between parked cars, and then reappear and go their separate ways. When officers apprehended defendant, they found approximately \$1,200 in cash in defendant's jacket pocket. Officers also later found a small amount of cocaine base powder in defendant's holding cell, which they believed came from his attempt to destroy cocaine base he had secreted on his person earlier.

Defense counsel made a motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for discovery of the personnel records of the officers involved in his apprehension. The defense sought any complaints for acts of misconduct

¹ Undesignated statutory references that follow are to the Health and Safety Code.

concerning the officers' "honesty and integrity, including but not limited to accusations of lying, filing false police reports, fabricating admissions, confessions or other evidence, perjury, theft, fraud, misrepresentation, or malfeasance." The court held an in camera hearing to examine records of complaints made against the officers. The court ordered certain materials produced in discovery.

After a trial, a jury found defendant guilty of the possession of cocaine base for sale charge. Defendant waived his right to a trial on the prior conviction allegations and admitted he had suffered all the convictions as alleged. The trial court denied defendant's motion to strike the prior "strike" convictions, granted the motion to strike defendant's two prior narcotics sales convictions, and sentenced defendant to the high term of four years, doubled to eight years pursuant to the Three Strikes law.

We appointed counsel to represent defendant on appeal. After examining the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that raises no issues but requests that our independent examination of the record include a review of the in-camera *Pitchess* proceedings. On April 20, 2016, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the record and are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.) The transcript of the February 4, 2015, in camera hearing constitutes an adequate record of the trial court's review of documents

provided to it pursuant to the *Pitchess* motion. There was no abuse of the trial court's discretion.

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.