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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY JAMES PRINGLE,

Defendant and Appellant.

C068368

(Super. Ct. No.  
CR027518)

Defendant Jeffrey James Pringle was convicted of burglary and receiving stolen property. The trial court sentenced him to six years in prison (three years doubled under California's three strikes law based on a strike).

Defendant contends (1) he did not admit that his prior out-of-state conviction constituted a strike under California law; (2) even if he admitted a prior conviction, his admission was not knowing and voluntary; (3) the record does not support a finding that the prior conviction qualifies as a strike; and

(4) defense counsel was ineffective in failing to challenge whether the prior conviction constituted a strike.

We agree with defendant (and the Attorney General) that defendant did not admit a prior strike conviction. We also agree that even though defendant waived his right to have the prior strike allegation determined by trial, there is insufficient evidence in the record to support a finding that his prior robbery conviction in Maine would constitute a prior serious felony conviction, and hence a strike, under California law. Accordingly, it is not necessary to address defendant's second and fourth contentions.

We will vacate defendant's sentence and remand the case to the trial court for further proceedings.

#### BACKGROUND

A detailed recitation of the underlying facts is unnecessary given defendant's contentions on appeal. The People charged defendant in a first amended information with six theft-related counts. It was further alleged that defendant had a prior "Class A Robbery" conviction in Maine on January 24, 1994, and that the prior conviction was for a serious or violent felony. (Pen. Code, § 667, subds. (b)-(i).)<sup>1</sup>

A jury convicted defendant of burglary (Pen. Code, § 459), receiving stolen property (§ 496, subd. (a)) and grand theft (§ 487, subd. (a)). The trial court sentenced defendant to the

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

upper term of three years in prison on the burglary conviction, doubled to six years "pursuant to the strike . . . ." The trial court also stayed a three-year term on the count for receiving stolen property pursuant to section 654 and granted the prosecution's motion to dismiss the grand theft conviction.

Defendant's prior Maine conviction was discussed only twice on the record. Before trial, defense counsel told the court that defendant would admit the prior conviction to avoid litigating the issue in front of the jury. The reporter's transcript then recorded the following colloquy:

"THE COURT: Do you understand that you've got a right to a trial on the prior to make the district attorney prove that you committed that prior conviction? Your counsel has just indicated you want to give up that right to a trial on the prior conviction; is that right?

"[DEFENDANT]: Yes, sir.

"THE COURT: Do you give up your right to a trial on the prior conviction?

"[DEFENDANT]: Yes, sir.

"THE COURT: Thank-you."

The trial judge never asked defendant if he admitted the prior robbery conviction. Instead, the judge moved on to other pretrial matters. Nevertheless, the minute order indicated defendant "admits prior conviction on case #93-864 with a conviction date of 1/24/94 and waives his rights."

Later, during trial, defendant testified that he had a prior felony conviction in Maine, but there was no other

evidence regarding the details of that conviction. The trial court had no further discussion with defendant regarding the prior conviction and never elicited information to establish that the prior conviction was a serious felony under California law.

#### DISCUSSION

Defendant contends he never admitted a prior strike conviction. The Attorney General agrees, and we do too.

Unless otherwise provided by law, a defendant must personally enter his plea in open court. (§ 1018; *People v. Hofferber* (1977) 70 Cal.App.3d 265, 268.) To find that defendant has admitted a strike, the trial court must specifically ask the defendant whether he admits the prior conviction and record the response in the minutes. (§ 1025, subd. (a).)

Defendant testified at trial that he had a prior robbery conviction in Maine, but he never admitted that the robbery conviction was a serious felony under California law, and hence he never admitted a strike for purposes of section 667, subdivisions (b) through (i). The trial court never asked him for this admission.

The minute order entry indicating that defendant admitted the prior conviction is not dispositive. We generally presume that conflicts between a reporter's transcript and a clerk's transcript are clerical in nature; we resolve conflicts in favor of the reporter's transcript unless the particular circumstances dictate otherwise. (*In re Merrick V.* (2004) 122 Cal.App.4th

235, 249.) Here, the reporter's transcript establishes that defendant waived his right to a trial but did not admit a prior serious felony conviction.

Moreover, although defendant waived his right to trial on the issue of the prior serious felony conviction allegation, he contends there is insufficient evidence in the record to support the trial court's finding that his prior conviction constitutes a serious felony under California law. We agree. Defendant testified that he had a prior robbery conviction, but there was insufficient evidence establishing that the conviction qualifies as a strike in California.

#### DISPOSITION

Defendant's sentence is vacated. In all other respects, the judgment is affirmed. The matter is remanded to the trial court to permit defendant to admit the prior serious felony conviction allegation or, in the alternative, to submit to a trial court determination on that issue. After the trial court imposes a new sentence, it shall amend the abstract of the judgment to reflect the new sentence and forward a certified

copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.