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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD MICHAEL DOUGLAS,

Defendant and Appellant.

C069297

(Super. Ct. No.
10F01924)

The People charged defendant Richard Michael Douglas with 20 criminal counts, with multiple enhancements for having personally used a firearm, due to his participation in a home invasion robbery. In return for the dismissal of 15 counts and the firearm enhancements with a *Harvey*¹ waiver, he agreed to plead no contest to five counts with a stipulated 13-year lid (maximum prison exposure). The trial court sentenced him to the

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

13-year lid, consisting of the upper term of nine years on the principal count and consecutive terms on the remaining counts.

Defendant contends the court abused its discretion--both by imposing the upper term on the principal count and by running the subordinate terms consecutively. Disagreeing, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Robbery

According to the probation report, on March 19, 2010, at around 12:10 p.m., R.L. (husband) and M.L. (wife) were at home when defendant and his cohort knocked on the front door, identifying themselves as police and dressed in police attire. The robbers forced their way into the house, displayed handguns, handcuffed R.L. and M.L., and made them lie face down on the floor. While one robber held a gun to the back of M.L.'s head, the other ran upstairs and ordered J.L. (age 12) and E.P. (age 64) out of bed, threatening to kill them if they did not comply. They handcuffed J.L. and ordered him to lie face down. They ordered E.P. into a downstairs bathroom and shut her inside. They threatened all of the victims with death. One robber ran upstairs and ransacked parts of the house while the other held the victims at gunpoint. The two escaped with the victims' property by stealing R.L.'s car.

Based on these facts, the People charged defendant with: count 1, conspiracy to commit home invasion robbery (Pen. Code,² § 182, subd. (a)(1)); counts 2 through 5, home invasion robbery (§§ 211, 213); count 6, first degree residential robbery (§ 459); counts 7 through 10, assault with a firearm (§ 245, subd. (a)(2)); count 11, criminal threat (§ 422); counts 12 through 15, false imprisonment (§ 236); count 16, kidnapping for robbery (§ 209, subd. (b)); count 17, unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a)); counts 18 and 19, receiving stolen property (§ 406, subd. (a)); count 20, false impersonation of a police officer (§ 538d). As to counts 1 through 6, 11, 13, and 16, the People alleged that defendant personally used a firearm. (§ 12022.53, subd. (b).)³

Defendant's Plea and Probation's Recommendation

On the understanding that he could receive a maximum prison sentence of 13 years, defendant entered a plea of no contest to counts 1, 2, 3, 14, and 17; the remaining counts and the firearm enhancements were dismissed with a *Harvey* waiver. The trial court accepted the plea and made the required findings.

The probation report recommended an aggregate 13-year prison term, consisting of nine years (the upper term) on count

² Further undesignated statutory references are to the Penal Code.

³ The People also criminally charged codefendant Richford Suba Caguiat for his conduct and further alleged that he had been convicted of three prior felonies, including one strike; he received a 25-year prison term pursuant to a plea bargain.

2, two years (one-third the midterm) on count 3, eight months (one-third the midterm) on count 1, eight months (one-third the midterm) on count 14, and eight months (one-third the midterm) on count 17, all to run consecutively. The report cited three circumstances in aggravation: (1) the manner in which the crime was carried out indicated planning, sophistication, and professionalism (Cal. Rules of Court,⁴ rule 4.421(a)(8)); (2) defendant had engaged in violent conduct which indicated a serious danger to society (rule 4.421(b)(1)); and (3) defendant had entered *Harvey* waivers as to counts 4 through 13, 15, 16, 18, 19, and 20 (rule 4.408). As to criteria affecting consecutive sentencing, the report opined that the crimes and their objectives were predominantly independent of each other. (Rule 4.425.)

Defense counsel filed a statement in mitigation, requesting probation with a year in county jail. He conceded that the facts recited by the probation officer were accurate, but cited three criteria affecting probation: (1) defendant's prior record of criminal conduct was limited to two petty thefts more than five years before the present matter (rule 4.313(b)(1)); (2) he had expressed remorse in letters to the trial court and to the victims (rule 4.414(b)(3)); and (3) he had written a personal letter to the probation officer further revealing his remorse (rule 4.414(b)(7)). Counsel also cited five

⁴ Further references to "rules" are to the California Rules of Court.

circumstances in mitigation: (1) defendant had no apparent predisposition to commit the crime, but was induced by another to participate (rule 4.423(a)(5)); (2) he had no significant criminal record (rule 4.423(b)(1)); (3) he accepted the consequences of his conduct at an early stage in the proceedings (rule 4.423(b)(3)); (4) he was prepared to make full restitution to the victims (rule 4.423(b)(5)); and (5) his prior performance on probation was satisfactory (rule 4.423(b)(6)).

Sentencing

At sentencing, the trial court summarily denied defense counsel's request for probation. Counsel then requested midterm sentencing on the principal count based on the mitigating circumstances recited in his pleading, and concurrent sentencing on the remaining counts (except for the vehicle theft count) because they were not separate and independent acts, but simply formed part of the home invasion robbery.

The prosecutor replied that defendant's conduct was "especially egregious" and that the People had taken the alleged mitigating circumstances into account when they extended the 13-year offer.

The trial court observed that defense counsel had "done a remarkable job for [his] client" in obtaining this disposition, since conviction on all counts would have exposed defendant to a life sentence. The court agreed with the prosecutor that the mitigating circumstances on which defendant relied had already been factored into the plea bargain.

The court imposed the upper term on count 2, citing the planning, sophistication, and professionalism of the crime and defendant's *Harvey* waivers on the dismissed counts. The court then imposed consecutive sentences on the remaining counts, finding that the crimes and their objectives were predominantly independent of each other.

DISCUSSION

I

Imposition of Upper Term

Defendant concedes that the first factor the trial court used to impose the upper term (the crime showed sophistication, planning, and professionalism) was valid. However, he contends that the court abused its discretion by imposing the upper term because it disregarded the mitigating factors which justified a midterm sentence.

A. *The Law*

"When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court." (§ 1170, subd. (b).)

"`Sentencing courts have wide discretion in weighing aggravating and mitigating factors [citations] We must affirm unless there is a clear showing the sentence choice was arbitrary or irrational.' [Citation.] The trial court need not explain its reasons for rejecting mitigating factors. [Citation.]" (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1582-1583.)

A single aggravating factor is sufficient to justify the upper term. (*People v. Steele* (2000) 83 Cal.App.4th 212, 226.)

B. Analysis

Here, the trial court cited two separate aggravating factors. Defendant concedes the validity of the first (planning, sophistication, and professionalism) and does not dispute the validity of the other (*Harvey* waivers). The court did not have to explain why it rejected defendant's proposed mitigating factors as grounds for midterm sentencing, but in fact it did explain: the plea agreement which the People offered and defendant accepted had already given him the benefit of those mitigating factors. We see no abuse of discretion under the applicable law.

II

Imposition of Consecutive Sentences

Defendant next contends the trial court abused its discretion by imposing consecutive terms as to the remaining counts because the factor on which the court relied (that the crimes and their objectives were predominantly independent of each other) was inapplicable. He renews trial counsel's argument that three of the four counts on which the court sentenced consecutively--conspiracy to commit home invasion robbery (count 1), the second home invasion robbery count (count

3), and false imprisonment (count 14)--were simply part and parcel of the home invasion robbery sentenced in count 2.⁵

Even if we assume without deciding that the crimes and their objectives were *not* predominantly independent of each other, defendant cannot show prejudice. This is because there were other factors the court could have properly cited to justify consecutive sentencing. (Cal. Const., art. VI, § 13; see *California Aviation Inc. v. Leeds* (1991) 233 Cal.App.3d 724, 731 [we review trial court's ruling, not its reasoning].) Thus any error in relying on the disputed factor was harmless.

"Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

"(a) Criteria relating to crimes

"Facts relating to the crimes, including whether or not:

"(1) The crimes and their objectives were predominantly independent of each other;

"(2) The crimes involved separate acts of violence or threats of violence; or

"(3) The crimes were committed at different times or separate places[.]

"(b) Other criteria and limitations

"Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

⁵ Defendant concedes, as he did below, that the vehicle theft (count 17) was independent of the remaining counts.

"(1) A fact used to impose the upper term.

"(2) A fact used to otherwise enhance the defendant's prison sentence; and

"(3) A fact that is an element of the crime may not be used to impose consecutive sentences." (Rule 4.425.)

Here, the trial court could properly have sentenced consecutively because defendant's crimes (including those dismissed with *Harvey* waivers) involved separate acts or threats of violence. (Rule 4.425(a)(2), (b).) Although the court used the *Harvey* waived counts' conduct as a basis for imposing the upper term on count 2, it could have properly made this same finding to justify consecutive sentencing.⁶ (*People v. Steele*, *supra*, 83 Cal.App.4th at p. 226.)

Further, the fact that defendant's crimes involved multiple victims and were transactionally related also justified consecutive sentencing. (See *People v. Caesar* (2008) 167 Cal.App.4th 1050, 1061 [naming of separate victims on separate counts]; *People v. Valenzuela* (1995) 40 Cal.App.4th 358, 363-365 [multiple victims of transactionally related offenses]; *People v. Leung* (1992) 5 Cal.App.4th 482, 504-505.)

Because valid reasons for consecutive sentencing exist on all the subordinate counts, defendant cannot show that the trial court abused its discretion in so doing.

⁶ As discussed *ante*, as to count 2, only one aggravating factor was required to justify imposition of the upper term. The trial court had already properly found sophistication and planning.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.