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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MIRMASSOUD KASHANI,

Defendant and Appellant.

D059920

(Super. Ct. Nos. SCD215859 &
SCN236630)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel B. Goldstein, Judge. Affirmed.

On May 20, 2009, Mirmassoud Kashani entered an Apple Store with the intent to steal two software items valued at \$398. On October 27, he entered a negotiated guilty plea to second degree burglary (Pen. Code, § 459) in case No. SCD215859. On October 20, 2010, the court sentenced Kashani to the 16-month lower prison term, to be served

concurrently with a four-year stipulated sentence in case No. SCN236630.¹ Kashani appeals, contending that the record fails to reflect the appropriate time waivers, and thus case No. SCD215859 must be dismissed because he was denied his right to a speedy sentencing hearing. We affirm.

BACKGROUND

Kashani's change of plea form reflects his waiver of "the right to a speedy and public trial by jury." An addendum to the change of plea form reflects his "[unequivocal]" waiver of "any and all rights to appeal . . . any sentence derived from this conviction." The addendum further states: "The parties agree that, in the event the Defendant is acquitted of all charges, allegations, and lesser included offenses in [No.] SCN236630, then, upon duly filed motion of the defense, the People will reduce the conviction in this plea agreement to a misdemeanor pursuant to Penal Code section 17[, subdivision] (b)(4). However, if the Defendant is charged and convicted of any new criminal offenses while pending sentencing on this case, he will not be entitled to a misdemeanor in this case notwithstanding an acquittal in [No.] SCN236630. [¶] . . . [¶] *Both parties have stipulated that the defendant's sentencing in this case will trail his pending North County case, [No.] SCN236630.*" (Italics added.)

At the change of plea hearing in the central division of the superior court, the trial court noted that according to the plea agreement, "we'll have this matter pending sentencing for some time." After a colloquy with defense counsel, the court stated, "The

¹ The offenses in case No. SCN236630 occurred between June 2005 and October 2007.

plan ultimately is then we will have a sentencing hearing, depending on what happens up in the North County." Addressing Kashani, the court stated, "And that's your understanding, right?" Kashani replied, "Yes, it is, your Honor." Referring to "all the details of the plea agreement" set forth in the addendum, the court asked Kashani, "This is your understanding and what you're relying upon, this [addendum], correct?" In response, Kashani stated, "Yes, with -- with some things that my attorney was going to clarify, just minor." Kashani's attorney proceeded to clarify matters unrelated to the issues in this appeal. The court then asked Kashani if he had read, understood, initialed and signed the change of plea form and the addendum. Kashani replied that he had. The court found that Kashani understood the consequences of the plea and accepted the plea.

After accepting Kashani's guilty plea, the court said, "This matter is now scheduled for sentencing on November 30,[2009,] or shall we waive time?" Kashani's counsel responded, "We'll waive time pending the trailing North County case, your Honor." Kashani's counsel said that the date of the next hearing in case No. SCN236630 was October 30. The court set a sentencing hearing in this case for October 30 in the North County division of the superior court, and noted "there's no time waiver yet as to sentencing, so we'll get a time waiver and schedule it then."

On October 30, 2009, the court continued the sentencing hearing to November 4. The record on appeal contains no information regarding any proceedings on November 4, and no record of any further proceedings until January 6, 2010. On January 6, the court

continued the hearing to March 5. There were a number of subsequent continuances, at least one of which was at Kashani's request, and several time waivers by Kashani.²

Sentencing in the instant case and in case No. SCN236630 took place on October 20, 2010. Kashani's counsel stated that there was "no legal cause why sentencing should not be imposed at this time." Against his counsel's advice, Kashani made a statement to the court. Kashani stated that "on October 27, 2009[, the court] did not take a sentencing waiver from me" Kashani concluded "that the case has gone far beyond what is allowed under Penal Code section 1382 and should actually be dismissed." The court denied the motion to dismiss.

During the pendency of this appeal, this court requested that Kashani's appellate counsel address the following issues: "(1) The addendum to the change of plea form . . . provides in part, 'Defendant unequivocally gives up any and all rights to appeal this conviction or any sentence derived from this conviction.' Does this provision preclude the appeal in this case?" and "(2) The [reporter's transcript of the change of plea hearing] indicates that appellant's trial counsel stated that appellant would waive time . . . , but there appears to be no personal waiver by appellant. Must the appeal in this case be dismissed for violation of appellant's right to speedy sentencing?"

*Kashani Explicitly Waived the Right to Claim
That He Was Denied a Speedy Sentencing Hearing*

² The waivers occurred on April 19, May 5, May 7, August 13, September 1 and September 21, 2010.

We need not decide whether the waiver of the right to appeal, set forth in the plea agreement, prevents Kashani from contending on appeal that he did not waive the right to a speedy sentencing hearing. At the change of plea hearing, Kashani explicitly waived that right by "[stipulating] that [his] sentencing in this case [would] trail his pending North County case[, No.] SCN236630." Furthermore, Kashani raised no objection to the delay until the sentencing hearing. Finally, Kashani cites no authority that would support his contention that he was improperly denied his right to a speedy sentencing hearing.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.