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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY ALAN YOAKUM,

Defendant and Appellant.

E054309

(Super.Ct.No. SWF10002208)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Petersen, Judge. Affirmed with directions.

Stephen M. Lathrop, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Timothy Alan Yoakum is serving a third strike prison term of 30 years to life after a jury convicted him of various counts related to his

efforts to resist arrest for driving a motorcycle while drunk. Defendant argues that his sentence should be reduced by one year because one of his five prior prison term enhancements under Penal Code¹ section 667.5, subdivision (b), was based on insufficient evidence. Specifically, defendant contends substantial evidence does not support the trial court findings that defendant's conviction for destroying prison property (§ 4600) was both a felony and resulted in a prison term, as required by section 667.5. As discussed below, we conclude that the trial court's findings are adequately supported by both defendant's sworn testimony at trial, and defendant's admissions to the court before the court decided to conduct a court trial on the prison priors.

FACTS AND PROCEDURE

On the evening of September 30, 2010, defendant resisted the efforts of three successive Sheriff's deputies to arrest him for driving his motorcycle under the influence of alcohol. By the time defendant was physically restrained and arrested, his actions had resulted in one of the deputies breaking bones in two fingers.

On April 25, 2011, the People charged defendant in an amended information with three counts of resisting a peace officer (Pen. Code, § 69), resisting a peace officer resulting in serious bodily injury (Pen. Code, §148.10), and driving under the influence (Vehicle Code, § 23152, subd. (a)). The People also alleged that defendant

¹ All section references are to the Penal Code unless otherwise indicated.

had three prior strike convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and five prior prison terms (Pen. Code, § 667.5, subd. (b)).

On May 2, 2011, a jury found defendant guilty of two counts of misdemeanor resisting arrest (§ 148, subd. (a)), a lesser included offense of felony resisting a peace officer, and guilty as charged on the remaining counts.

Immediately after dismissing the jury, the trial court discussed with the parties the scheduling of the upcoming court trial on the prior conviction allegations, after pointing out that defendant had waived his right to a jury trial on the priors. After speaking with defendant, defense counsel told the court that defendant was prepared to admit the priors, and the court agreed to take defendant's admissions on the spot. The court questioned defendant regarding the priors, including the section 4600 prior. The court halted the proceedings after defendant was unsure whether the felony conviction subsequent to his release from custody for either the section 4600 or burglary convictions took place within the five-year "washout period" required by section 667.5.² The court asked the People to present a prison packet the following day during a court trial on the priors to "clear up some of these issues." The court further stated, "I'll consider the People's evidence along with some of the statements your client made today."

At the beginning of the May 3, 2011 court trial, the court stated: "Yesterday we actually had started off by taking some admissions on the priors but based upon some

² Defendant committed the section 4600 violation while incarcerated on a 1983 burglary conviction.

of the responses that the defendant had given, the Court—I felt it would be more proper if we actually went through the Court trial and had the People present the evidence that they intended to present initially. And I can also take into consideration perhaps some of the comments the defendant made yesterday, but I really want to look at the documentation and see what we have there.” The main issue the court had regarding the prison priors was that defendant was unable to clarify during his admission whether each took place within the five-year washout period. After retiring to look over the prison packets, the trial court returned and found each of the prior strike and prior prison term allegations to be true. In doing so, the court stated: “Upon reviewing these documents and also taking into consideration the testimony as given by the defendant during the course of the trial when he testified under oath on his own behalf in the defendant’s case and taking into consideration essentially only those two factors, really not taking into consideration anything that was said yesterday when we started to take those admissions—I’m just not even really considering that”

On August 12, 2011, the trial court sentenced defendant to 30 years to life as follows: 25 years to life for the resisting with serious bodily injury, with stayed or concurrent terms on the remaining counts, and one year consecutive on each of the five prior prison term enhancements. This appeal followed.

DISCUSSION

1. The Prison Priors—Sufficiency of the Evidence

A sentence enhancement under section 667.5 requires proof that the defendant was convicted of the prior felony, imprisoned for that conviction, completed the term

of imprisonment, and failed to remain free from custody and the commission of a new offense resulting in a felony conviction for five years. (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) Defendant contends the evidence was insufficient to establish that one of the five alleged prison priors, for violating section 4600, resulted from a felony rather than a misdemeanor, and that he served a prison term for that offense.

On January 15, 1988, defendant was convicted of destroying prison property, in violation of section 4600, subdivision (a). Section 4600 is a “wobbler” offense, meaning it can be charged as either a felony or a misdemeanor. At the time of defendant’s 1988 conviction, destruction resulting in \$400 or less in damage was charged as a misdemeanor.³

Our review of any claim of insufficiency of the evidence is limited. “ ‘ “When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence—i.e., evidence that is credible and of solid value—from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.” ’ ” (*People v. Hill* (1998) 17 Cal.4th 800, 848-849.) We must presume in support of the judgment the existence of every fact the trier of fact could

³ In 1988, section 4600 provided: “Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a fine not exceeding ten thousand dollars (\$10,000), and by imprisonment in the state prison, except that where the damage or injury to any city, city and county or county jail property or prison property is determined to be four hundred dollars (\$400) or less, such person is guilty of a misdemeanor.”

have reasonably deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

The testimony of a single witness is sufficient evidence to support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) To warrant the rejection of statements given by a witness who has been believed by the trier of fact, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. (*People v. Thornton* (1974) 11 Cal.3d 738, 754, overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 685.)

The evidence before the court regarding the felony nature of defendant's section 4600 conviction is as follows. First, neither of the two certified prison packets introduced by the prosecution during the court trial on the priors refer to a section 4600 conviction, so the trial court's decision on the felony nature of, and prison term for, the section 4600 conviction could not be based on those. Second, on direct examination at trial, defense counsel asked defendant about his felony convictions, including in this category, the section 4600 conviction:

"[Defense counsel] Mr. Yoakum, the first thing I want to ask you is that you have had previous convictions, is that correct, felony convictions?"

"[Defendant] Yes, sir.

"[Defense counsel] And I'm going to ask you first, you've been previously convicted of what's called 459, which is first degree burglary, and 10851, which is taking an automobile without an owner's permission, on November 9th, 1983, is that correct?"

“[Defendant] Yes, sir.

“[Defense counsel] You’ve been convicted of what’s called 4600 of the Penal Code, which is called destruction of prison property, and that took place on January 15th, 1988, is that correct?

“[Defendant] Yes sir.”

During the court trial on the priors, the People asked the court to take judicial notice of these admissions. The court agreed to do so, adding, “I can certainly consider testimony that was given during the trial by the defendant as well that was given under oath.” We consider this testimony by defendant that he had prior felony convictions, including one for violating section 4600, to be substantial evidence supporting the trial court’s ruling that defendant suffered a felony conviction for that violation.

We now consider the evidence regarding whether defendant served a prison term for the section 4600 felony conviction. The only competent evidence before the trial court at the time of its ruling on the prison priors was defendant’s admission on the previous day, May 2, 2011. On May 2, 2011, the trial court first questioned defendant as to his intentions to admit each of the prior convictions listed in the information: “It’s my understanding, through your attorney, that you’re prepared to admit that these prior offenses that are listed in the Amended Information are true.” Defendant answered to this question, “Uh-huh.” After asking about defendant’s prior felony convictions and prison terms for assault with a deadly weapon, robbery, and possessing a firearm, the trial court asked defendant about his section 4600 conviction:

“[The Court] Okay. Let me ask you about the fourth prior.

“[Defendant] Yes.

“[The Court] January 15th, 1990—excuse me, January 15, 1988—

“[Defendant] Uh-huh.

“[The Court] —in violation of Penal Code section 4600(a)—

“[Defendant] Destruction of state property.

“[The Court] There you go, destruction of jail property. And because of that you received a prison term and you did not remain free of prison custody for a period of five years. In other words, you picked up another felony—

“[Defendant] Yeah.”

At that point, the defendant demonstrated that he was not able to admit with certainty whether, after being released from prison on the section 4600 and/or the burglary conviction, he remained free from prison for five years before his subsequent felony conviction. For this reason, the court determined a court trial on the priors would be necessary so he could review defendant’s prison packets. However, nothing in defendant’s testimony indicates that he was at all uncertain about his answer, “Yeah,” to the statement, “And because of that you received a prison term” or, for that matter, to the statement, “In other words, you picked up another felony.” For this reason, we conclude that sufficient evidence supports the trial court’s finding that defendant’s conviction for violating section 4600 resulted in a prison term.

We acknowledge defendant’s contention that this evidence was not before the trial court because the court explicitly stated that it was basing its decision regarding

the prison priors strictly on the trial testimony and the prison packets submitted by the People, without considering defendant's admissions the previous day. However, we do not think that the trial court's statement removed defendant's admissions from the evidence before the trial court, nor do we think that considering this admission in determining the sufficiency of the evidence denies defendant due process. And this is why.

Contrary to defendant's assertion in his opening brief, the trial court never indicated that it found defendant's admissions to be unreliable or ambiguous. In fact, the trial court stated on two separate occasions that it would likely consider defendant's admissions in conjunction with the prison packet. First, after taking defendant's admissions but discovering defendant was unclear as to the five-year washout period for one or more of the prior convictions, the trial court asked for a court trial so the People could submit the prison packets. In doing so, the court stated, "I'll consider the People's evidence along with some of the statements your client made today." Second, at the very beginning of the court trial on the priors the following day, the court indicated that it found some of defendant's admissions to be helpful, but thought it would be "more proper" to allow the People to prove some of the necessary elements by submitting defendant's prison packets. The court continued: "And I can also take into consideration perhaps some of the comments the defendant made yesterday, but I really want to look at the documentation and see what we have there." These two comments suggest to us that the trial court did not find defendant's admissions (other than those regarding the five-year washout period)

unreliable or ambiguous, because the court intended to consider them, if necessary, in conjunction with the prison packets and defendant's trial testimony. We take the trial court's statement that it was making its determinations on the prison priors without use of defendant's admissions to mean that the court simply thought it had enough evidence without considering the admissions, which were of course messier, or less straight-forward, than paperwork submitted by the Department of Corrections and Rehabilitation. Based on the trial court's twice-earlier-stated intention to consider defendant's admissions where necessary in conjunction with the other evidence of his prison priors, we think this is the most reasonable interpretation of the trial court's intention with regard to the admissions. Therefore, because the trial court does not appear to have found the admissions to be unreliable, we are not precluded from considering them in determining the sufficiency of the evidence.

2. The Abstract of Judgment Should be Corrected

The parties and this court agree that the abstract of judgment should be corrected in the following respects:

First, the description of count 4 should be changed from "Resisting Officer/Cause Death," to "Resisting Officer/Serious Bodily Injury" to reflect that the officer in question was injured rather than killed.

Second, the description of the sentence on count 2 should be changed from "Determinate" to "Indeterminate" in the following sentence: "THE DETERMINATE SENTENCE ON COUNT 2 TO BE SERVED CONCURRENTLY WITH THE INDETERMINATE SENTENCE ON COUNT 4." This is because the trial court

imposed for count 2 an indeterminate sentence of 25 years to life, which was stayed under section 654.

DISPOSITION

The judgment of conviction is affirmed. The superior court clerk is directed to prepare a corrected abstract of judgment as described immediately above. After preparing the corrected abstract, the superior court clerk is directed to forward to the Department of Corrections and Rehabilitation certified copies of the corrected abstract.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.