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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.

TERRENCE SCOTT,

Defendant and Appellant.

E055214

(Super.Ct.No. FVA901980)

OPINION

APPEAL from the Superior Court of San Bernardino County. Dwight W. Moore, Judge. Affirmed.

Charles R. Khoury, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Terrence Scott is serving a nine-year state prison term after pleading guilty to second degree robbery and admitting a strike prior and a five-year prior. The trial court denied defendant's motion to withdraw his plea. As discussed below, we affirm the conviction.

## FACTS AND PROCEDURE

On December 3, 2009, about 3:30 p.m., defendant was a passenger in a car that pulled up alongside the victim, who was walking home alone from Carter High School in Rialto. Defendant told the victim to give him his cell phone. When the victim initially refused, defendant lifted up his shirt to reveal the handle of a black handgun in his waistband. Defendant told the victim he “[b]etter give me your cell phone, [or] I swear to God, I’ll shoot you or kill you.” The victim later told a police officer that he was afraid for his life, so he gave defendant the cell phone. Defendant then got back into the car, which drove away. Defendant was arrested later that day after the car he was riding in was stopped by police. The victim identified defendant as the man who robbed him, and police found inside the car the victim’s cell phone and a backpack containing a black semi-automatic handgun.

The People charged defendant in an information with second degree robbery in count 1 (Pen. Code, § 211)<sup>1</sup>, and with personally using a handgun during the robbery (§§ 12022.53, subd. (b), 12022.5, subd. (a)). The People also charged defendant in count 2 with making a criminal threat (§ 422) and with personally using a handgun in the commission of count 2. In count 3, the People alleged defendant was a felon in possession of a firearm. (§ 12021, subd. (a)(1).) In count 4, the People alleged defendant was a prohibited person who possessed ammunition. (§ 12316, subd. (b)(1).) Further, as to counts 1 through 4, the People alleged that defendant had suffered a prior strike

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<sup>1</sup> All section references are to the Penal Code unless otherwise indicated.

conviction. (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i).) As to counts 1 and 2, the People alleged that defendant had a prior “five year” serious felony conviction. (§ 667, subd. (a)(1).) Finally, the People alleged defendant had three prison priors. (§ 667.5, subd. (b).)

On April 16, 2010, defendant pled guilty to the second degree robbery and admitted both the prior strike conviction and the five-year felony conviction. The negotiated sentence would be the lower term of two years for the robbery, doubled to four years as a second strike, plus five years for the prior serious felony, for a total of nine years in prison.

On May 17, 2010, the date set for sentencing, defendant indicated that he wanted to withdraw his plea. Newly retained defense counsel filed a motion to withdraw defendant’s plea based on the pressure exerted on defendant by his appointed counsel to plead guilty despite defendant’s wish to go to trial. The trial court heard the motion, along with testimony from defendant, on August 6, 2010. The trial court denied the motion on the basis that defendant had simply changed his mind and that was not a sufficient ground to grant the motion. Later that day, the trial court sentenced defendant to nine years in state prison as agreed. This appeal followed.

### **DISCUSSION**

Upon defendant’s request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a

statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. Defendant argues that his appointed defense counsel was ineffective for not explaining to him how the prior felony conviction would add five years to his sentence and for not properly investigating this case. During the taking of the plea, the following exchange took place between defendant and the trial court:

“THE COURT: And do you also admit that that’s your prior conviction pursuant to 667(a)(1) of the Penal Code as well because it is a serious and/or violent felony? Do you admit to that?”

“THE DEFENDANT: Yes, but I don’t understand nothing.”

“THE COURT: The 5-year prior is based on the same strike prior. It’s a second degree robbery, so it’s used for two purposes, to indicate it’s a strike as well as it’s a 5-year prior. [¶] Do you understand that?”

“THE DEFENDANT: Yes, ma’am.”

Thus, any prejudice the defendant may have suffered from any failure by counsel to explain the five-year enhancement in the plea deal was cured by the trial court’s explanation of same and defendant’s indication that he understood. Regarding defense counsel’s failure to investigate, defendant does not specify what defense counsel would have found that would have resulted in a better outcome for defendant if defense counsel had investigated further. Neither was defendant at all specific about these asserted deficiencies in investigation during the hearing on his motion to withdraw his plea.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

**DISPOSITION**

The conviction is affirmed.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

MILLER  
J.