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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MELISSA Y. Y. ENRIQUEZ,

Defendant and Appellant.

F062945

(Kern Sup. Ct. No. BF132948A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Sidney P. Chapin, Judge.

Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Poochigian, J. and Franson, J.

## INTRODUCTION

Appellant/defendant Melissa Y. Y. Enriquez pleaded no contest to grand theft (Pen. Code,<sup>1</sup> § 487), after stealing \$125,000 worth of property from the residence where she was employed as a housekeeper. She was sentenced to three years in prison.

On appeal, her appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) We will affirm.

## FACTS

In 2008, Cynthia Younger hired defendant to work as her housekeeper and help take care of her daughter. Defendant worked at Younger's house every day and had a key. Younger described herself as a "collector," with her house "packed to the brim" with collectible items including jewelry, antiques, crystal, glassware, china, clothing, dolls, silver, vintage books, and coins. She kept records and certificates of authenticity for many of the items. She regularly sold the collectibles from her own eBay account.

During various times over the course of defendant's employment, Younger discovered that nearly 200 items of property were missing from her house. She asked defendant about the items. On some occasions, the missing items would reappear in Younger's house. Younger did not change the outer door locks but added locks to some of her interior doors.

On January 2, 2010, Bakersfield police officers responded to Younger's house, and she reported both her car and house had been burglarized. The car had been parked inside her locked garage, and there were no signs of forced entry. Younger's purse and nearly \$20,000 worth of property was missing from the house, including computers, digital devices, cameras, jewelry, luggage, and expensive clothing. Younger suspected

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<sup>1</sup> All further statutory citations are to the Penal Code unless otherwise indicated.

defendant was the culprit and advised the police about the other missing property. The police began an investigation.

Younger changed the house locks and fired defendant. About a month later, however, Younger decided to rehire defendant and gave her another house key, an act which Younger later described as the “dumbest thing I ever did.”

On April 30, 2010, Younger confronted defendant and asked for her property back. Defendant returned some of the missing property to Younger’s house. Younger fired defendant and defendant asked for her paycheck.

At some point during her employment, defendant had cleaned Younger’s vacation cabin. Younger later discovered that defendant had stolen property from the cabin, including a computer system, silver coins, and antiques.

On July 8, 2010, Younger went to the Bakersfield Police Department, looked at photographs taken from a camera which belonged to defendant’s daughter, and identified several items of property which belonged to her.

Younger later discovered that many of her missing items had been sold on eBay by “Nookie 13y.” The police contacted eBay and determined defendant was “Nookie 13y.”

The police obtained a search warrant for defendant’s apartment and found numerous items which had been taken from Younger’s house. Defendant’s boyfriend said that she bought the items at yard sales and sold them on eBay.

On June 7, 2010, defendant was arrested on a misdemeanor warrant. She was questioned about Younger’s missing property. Defendant said that Younger either directly gave her the items or left them by defendant’s car and told her to take them. Defendant said Younger was falsely accusing her of theft because Younger said she was in debt for \$40,000, and her father had “ ‘cut her off.’ ” According to defendant, her own mother told Younger that defendant was a thief because defendant and her mother were involved in a custody dispute for defendant’s children.

### **The charges**

On December 20, 2010, an information was filed in the Superior Court of Kern County which charged defendant with counts I and II, grand theft (§ 487, subd. (a)); and counts III and IV, receiving stolen property (§ 496, subd. (a)). Defendant pleaded not guilty. Defendant rejected a plea bargain of three years eight months.

### **Defendant's no contest plea**

On March 9, 2011, defendant's jury trial began. On March 10, 2011, the trial continued with Younger's direct examination testimony. After the morning recess, defense counsel advised the court that defendant would enter into a negotiated disposition.

Defendant pleaded no contest to count I, grand theft, with a maximum possible term of two years. The remaining charges and an unrelated misdemeanor case were dismissed. Defendant agreed to a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, which could be used to determine victim restitution.

The court advised defendant of her constitutional rights, and defendant said she understood and waived her rights. The parties stipulated to a factual basis for the pleas. The court advised defendant that the maximum possible term was two years and also advised her of the maximum possible fines.

Defendant signed an "Advisement of Rights, Waiver, and Plea Form for Felonies," indicating the terms of her no contest pleas, that the other charges would be dismissed, and that she understood and waived his constitutional rights.

Defendant requested to remain released on bond. The prosecution requested the court obtain defendant's waiver pursuant to *People v. Cruz* (1988) 44 Cal.3d 1247 (*Cruz*), in case she failed to appear or was arrested before the sentencing hearing.<sup>2</sup> The court

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<sup>2</sup> A *Cruz* waiver allows the trial court to withdraw its approval of the defendant's plea and impose a sentence in excess of the bargained-for term, if the defendant willfully

agreed, and advised defendant that she would remain on bond, but if she left the jurisdiction and failed to appear, “then the limitations on the plea agreement entered into are going to be waived and the court’s going to proceed to impose the sentence it deems appropriate at the time.” Defendant said she understood, and assured the court that she would appear for the sentencing hearing on April 11, 2011.

### **Sentencing**

On April 11, 2011, defendant failed to appear for the sentencing hearing, and the court issued a bench warrant.

On May 17, 2011, defendant appeared in court, and the court ordered the bond reinstated and exonerated.

On June 15, 2011, the court conducted the sentencing hearing. The prosecutor reminded the court that defendant’s original plea was for two years, but she entered the *Cruz* waiver and failed to appear at the scheduled sentencing hearing. The prosecutor argued that given defendant’s failure to appear and the *Cruz* waiver, the court should impose a three-year term instead of the two-year term that was previously discussed.

The court granted the prosecutor’s request based on the *Cruz* waiver and sentenced defendant to the upper term of three years, based on defendant’s failure to appear and her prior criminal record.

The court also ordered direct victim restitution of \$125,000, based on the victim’s extensive documentation of over 500 pages of receipts and eBay printouts, which she submitted to the probation department and was attached to the probation report. The court also imposed a \$200 restitution fine pursuant to section 1202.4, subdivision (b), and stayed the \$200 restitution fine under section 1202.45. The court imposed a \$40 court security fee (§ 1465.8, subd. (a)(1)); a \$30 court facility funding assessment (Gov. Code,

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fails to appear for sentencing. (*Cruz, supra*, 44 Cal.4th at p. 1254, fn. 5; *People v. Masloski* (2001) 25 Cal.4th 1212, 1219.)

§ 70373, subd. (a)(1)); and a \$10 fine (§ 1202.5). Defendant received 36 actual days and 36 days of conduct credit, for a total of 72 days.

On July 20, 2011, defendant filed a notice of appeal, challenged the validity of the plea, and requested a certificate of probable cause. On July 22, 2011, the court denied the request for the certificate of probable cause. Thereafter, this court held the notice of appeal was inoperable and granted time for defendant to file a new notice of appeal. On August 8, 2011, defendant filed a timely notice of appeal, which did not challenge the validity of the plea.

### **DISCUSSION**

As noted *ante*, defendant's appellate counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised she could file her own brief with this court. By letter on February 8, 2012, we invited defendant to submit additional briefing. To date, she has not done so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.