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

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICIA CEJA,

Defendant and Appellant.

F063439

(Fresno Sup. Ct. No. F11902372)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jon Kapetan,
Judge.

Elisa A. Brandes, 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 Patricia Ceja pleaded no contest to one count of second degree robbery (Pen. Code,¹ § 211), admitted that a principal was armed with a firearm (§ 12022, subd. (a)(1)), that she had one prior strike conviction (§ 667, subds. (b)-(i)) and one prior prison term enhancement (§ 667.5, subd. (b)). She was sentenced to seven 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 (*Wende*)). We will affirm.

FACTS²

On April 27, 2011, Omar Cook arrived at defendant's house with Monica De La Garza, who was defendant's daughter and Cook's girlfriend. Cook told defendant that he needed her to go with him to a certain location which he planned to rob so she could case the business and then drive the car after the robbery. Cook drove defendant to the Advance America Check Cashing (Advance America) business located on West Clinton in Fresno. Cook told defendant to enter the business and determine if the employees were behind glass.

Defendant entered the business and asked an employee if they cashed checks. After obtaining the information, defendant walked out and Cook picked her up. Cook drove into the adjacent neighborhood and parked the car. Cook told defendant to wait in the driver's seat and he would be right back.

Cook entered the business, produced a gun, and ordered the clerk to hand over all her cash from her drawer. The clerk complied. Cook then went behind the counter, held the clerk at gunpoint, and ordered her to get the money from the safe. The clerk opened

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

² Given defendant's no contest plea, and the absence of a preliminary hearing, the following facts are taken from the probation report.

the safe and handed the cash to him. Cook next demanded the money from another employee's drawer, but the clerk said she did not have the keys.

Cook ordered the clerk to walk him out to the front of the store. When they got outside, Cook began to jog away from the business. The clerk returned inside and immediately hit the alarm while another employee called 911.

As defendant cased the business, and Cook committed the robbery, Fresno Police Detective Phebus happened to be watching the check cashing building while parked in an unmarked vehicle. She was investigating a series of armed robberies at local businesses. The suspect had been described as an African-American male driving a white vehicle. Detective Phebus saw Cook drive up to Advance America in a white Crown Victoria, and realized that the driver and the vehicle matched the descriptions. She saw defendant initially enter the business, and then saw defendant leave and Cook go inside. While Cook was committing the robbery, Detective Phebus called for backup officers and air support in case he tried to escape.

Detective Phebus was still watching the business when she saw Cook walk out. Cook walked away from the area, but Detective Phebus followed in her vehicle. Phebus shouted at defendant that she was a police officer and ordered him on the ground. Cook ignored her orders and kept going. Cook was confronted by two officers with their guns drawn. Cook refused to stop and tried to run away. However, he turned in front of Detective Phebus's vehicle, and he was hit. Defendant was arrested and an ambulance arrived to treat him for his injuries.

In the meantime, defendant had been waiting in the driver's seat of the white car for Cook to return from the store. She heard sirens and assumed Cook had been caught. She began to drive away, but Detective Phebus saw the white Crown Victoria. The vehicle was immediately stopped, and defendant was taken into custody.

The firearm that Cook used was identified as the same weapon used in another robbery. Defendant admitted that she knew Cook was involved in a string of robberies in

Fresno, and that her daughter, De La Garza, was involved in at least two of those robberies. Defendant also admitted that she was involved in a robbery which Cook and De La Garza committed in Merced; that she received money from that robbery; and that she knew Cook used a gun. Cook had been using a rental car during the robberies. Defendant claimed she only helped Cook because he threatened that something might happen to her daughter.

The complaint

On April 29, 2011, a complaint was filed in the Superior Court of Fresno County charging defendant, and codefendants Omar Cook and Monica De La Garza, with multiple felony offenses. In count I, defendant and both codefendants were charged with second degree robbery of the clerk at Advance America on April 27, 2011; it was further alleged as to defendant that a principal was armed with a firearm, and that she had one prior strike conviction and one prior prison term enhancement.

In counts II and III, Cook and De La Garza were separately charged with additional second degree robberies with firearm allegations. In counts IV, V, VI, and VII, Cook was separately charged with committing second degree robberies, again with firearm allegations. Cook was on bail when he committed the offenses.

On May 2, 2011, defendant pleaded not guilty and denied the special allegations.

Defendant's no contest plea

On August 17, 2011, defendant's attorney advised the court that she had accepted the prosecution's offer to plead no contest to count I and admit the special allegations for an indicated sentence of seven years. Defendant signed a "Felony Advisement, Waiver of Rights, and Plea Form," which stated the nature of her no contest plea and admissions, her acknowledgement that count I constituted a second strike in future prosecutions, and that the indicated term would be seven years.

The court advised defendant of her constitutional rights, and defendant said she understood and waived her rights. Defendant pleaded no contest to count I, second

degree robbery, and admitted the firearm allegation and the prior conviction allegations. The parties stipulated to a factual basis for the plea and admissions.³

The probation report

According to the probation report, defendant had prior convictions for both misdemeanor and felony theft offenses which started in 1986 and continued to 1996. In 1997, she was sentenced to four years in prison for first degree burglary, which was committed when she entered the victim's home through an unlocked garage door and took the victim's jewelry.

In June 2002, she was placed on probation for five years for possession of cocaine. In March 2003, she was sentenced to 32 months in prison for felony petty theft with a prior conviction and found in violation of probation. The theft offense occurred when defendant took and used her boyfriend's credit and ATM cards without his permission. She was released on parole but repeatedly violated parole. In April 2007, she was convicted of giving false information to an officer and received a fine. In May 2009, she was finally discharged from parole. In November 2010, defendant was convicted of misdemeanor possession of narcotics paraphernalia and received a fine.

Defendant had lost custody of her minor children because of drug use. She had been employed as a housekeeper, a telemarketer, and also did "odd jobs."

Defendant told the probation officer that she heavily used cocaine on a daily basis and smoked marijuana once a week. She had tried methamphetamine and heroin but did not like the drugs. She had participated in and failed to complete at least five substance

³ On the same date, De La Garza pleaded no contest to one count of second degree robbery and admitted the firearm enhancement. The court granted the prosecution's motion to dismiss the remaining count against her. De La Garza, who did not have any criminal history, was sentenced to three years. According to the probation report, Cook was found incompetent to stand trial and was committed to Atascadero State Hospital in August 2011.

abuse treatment programs. Defendant again claimed that she only participated in the robbery because Cook threatened her daughter.

The probation report stated there were multiple aggravating factors: the manner in which the crime was committed indicated planning, sophistication, or professionalism; defendant had engaged in violent conduct; her prior convictions were numerous or of increasing seriousness; and her prior performance on probation or parole was unsatisfactory. There was only one mitigating factor, that she voluntarily acknowledged wrongdoing at an early stage.

As for defendant's claim about Cook's alleged threats, the probation report stated:

“Were that the case, it seems that the defendant would not have found herself in the position of helping Omar Cook, on more than one occasion, to commit numerous robberies throughout Fresno and neighboring communities.

“Undoubtedly, the defendant, having been in the criminal justice system for a number of years, was savvy enough to remove herself from participation in Cook's robbing spree, had she so chosen. In addition, she admittedly took monetary gains from at least one robbery, showing her complete willingness to be involved, if not her endorsement of his actions.”

Defendant's request to dismiss the prior strike conviction

On September 1, 2011, defendant filed a request for the court to dismiss the prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) because the current offense was relatively minor; the maximum potential length of the sentence was unjust; there were mitigating circumstances surrounding the current offense; defendant was only 45 years old; and her prior offenses occurred 14 years ago.

The prosecution's opposition asserted that dismissal was inappropriate because of defendant's lengthy criminal history of theft-related offenses since 1991; she had never been free of crime or custody for more than a few years at a time; and she had been in

continuous custody for either a new offense or parole violation, every two years since 2003.

The sentencing hearing

On September 28, 2011, the court conducted the sentencing hearing. Defense counsel asked the court to dismiss the prior strike conviction because of her long drug history, and her desire to take responsibility for her actions. The prosecutor replied that while defendant's prior strike conviction occurred in 1997, she had a long record, her crimes were increasing in seriousness and severity, and she knew that Cook was committing robberies. The prosecutor noted that during the robbery in this case, defendant was the get-away driver and then tried to leave the scene after Cook was hit by the detective's car.

The court denied defendant's request to dismiss the prior strike conviction and found the current offense was not minor since it was an armed robbery. Defendant was 31 years old when she committed the prior strike conviction, residential burglary, and "[s]he can't even use youth as a mitigating factor." The strike offense had not occurred that long ago, considering her prior and subsequent criminal history. In addition, her prior convictions did not result from a single period of aberrant behavior.

The court imposed the midterm of three years for count I, doubled to six years as the appropriate second strike sentence plus one year for the firearm enhancement. The court dismissed the prior prison term enhancement. The court ordered a \$1,400 restitution fine pursuant to section 1202.4, subdivision (b) and stayed the \$1,400 restitution fine under section 1202.45. The court reserved the issue of victim restitution. The court also imposed a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373, subd. (a)(1)), and probation and supervision fees (§ 1203.1b). Defendant received 156 days of actual custody credit and 23 days of section 2933.1 good time/work time credit, for a total of 179 days.

On September 30, 2011, defendant filed a timely notice of appeal.

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 6, 2012, we invited defendant to submit additional briefing. To date, she has not done so.

Defendant has failed to obtain a certificate of probable cause and therefore cannot challenge the underlying validity of his plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 77-79.)

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

DISPOSITION

The judgment is affirmed.