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

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY PAUL JENKINS, JR.,

Defendant and Appellant.

F063450

(Super. Ct. No. 1424511)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Stanislaus County. Nancy Ashley, Judge.

David D. Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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\* Before Gomes, Acting P.J., Kane, J. and Franson, J.

A jury convicted appellant, Danny Paul Jenkins, Jr., of first degree robbery (Pen. Code, § 212.5, subd. (a); count 1),<sup>1</sup> first degree burglary (§§ 459, 460, subd. (a); count 2) and assault with a deadly weapon (§ 245, subd. (a)(1); count 3). The jury also found true enhancement allegations that appellant personally used a deadly and dangerous weapon in committing both the count 1 and count 2 offenses (§ 12022, subd. (b)), and that he committed all three offenses against a person he knew or reasonably should have known was 65 years of age or older, within the meaning of section 667.9, subdivision (a) (section 667.9(a)). In a separate proceeding, the court found true enhancement allegations that appellant had served two separate prison terms for prior felony convictions (§ 667.5, subd. (b)). The court imposed a prison term of 10 years, consisting of the six-year upper term on the robbery conviction, one year on the accompanying weapon use enhancement, one year on the accompanying section 667.9(a) enhancement, and one year on each of the two prior prison term enhancements. The court also imposed, and stayed pursuant to section 654, the following terms: the four-year midterm on the count 2 substantive offense; one year on each of the two count 2 enhancements (§§ 667.9(a), 12022, subd. (b)); the three-year midterm on the count 3 substantive offense and one year on the accompanying section 667.9(a) enhancement. The court awarded appellant 400 days of presentence credit, consisting of 348 days of actual time credit and 52 days of conduct credit.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d. 436.) Appellant, apparently in response to this court's invitation to submit supplemental briefing, has submitted a document in which he makes various claims which we discuss below. We affirm.

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<sup>1</sup> All statutory references are to the Penal Code.

## FACTS

On October 8, 2010 (October 8), at approximately 5:00 p.m., 92-year-old Wilson Boyd was at home, reading in the “front room” of his house, and his son, Gary Boyd, and his grandson, Jesse Boyd, were outside working on their cars, when, Gary testified, appellant and a woman approached the house.<sup>2</sup> Gary further testified to the following: The woman was on foot and appellant was riding a bicycle. The woman had “blisters all over” her feet and “it looked like she could barely walk.” She asked Gary if she could come inside the house and use the phone to call a taxi. Gary denied her request, and she walked away down the street, and sat on the curb. Appellant continued to ride his bicycle, “circling around.” Gary went into the garage and told Jesse to call a taxi for the woman. Approximately five minutes later, Gary went into the house, and saw, in the “front room,” the woman, his father and Jesse. The woman was talking on the telephone. Shortly thereafter, Gary got in his car and drove off to go pick up his granddaughter. As he drove off, he saw the bicycle appellant had been riding, lying in the driveway of the house two doors down from his father’s house.

Wilson testified that at approximately 5:00 p.m. on October 8, a woman came to his front door and asked if she could use the telephone to call a taxi to take her to the hospital.<sup>3</sup> “[A]ll of her toes on both feet were just massive bloody [*sic*] ....” Wilson invited her in and handed her the telephone. Jesse testified that he handed the woman a telephone directory, and that shortly thereafter, he and the woman went outside to the front porch, to smoke.

After the woman and Jesse had gone outside, Wilson was sitting in a chair when appellant, with a knife in his hand, “came in from the hallway,” “rushed over” to where

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<sup>2</sup> For the sake of clarity and brevity, and intending no disrespect, we refer to Wilson Boyd, Gary Boyd and Jesse Boyd by their first names.

<sup>3</sup> Except as otherwise indicated, the remainder of our factual statement is taken from Wilson’s testimony.

Wilson was sitting, and demanded, “Give me your wallet. Give me your wallet.”

Wilson told him he did not have a wallet, and that he kept his money “in [his] shirt ....”

Wilson then “took out” his “money pouch,” and appellant, who had been holding the knife at Wilson’s throat, “took” the pouch and left the house. The pouch contained some good luck charms and an envelope “from the bank” that Wilson had “cut ... in half” and which contained approximately \$200 to \$300 in cash.

As appellant left the house, “he put the knife back on the dishwasher in the kitchen ....” After Wilson heard the door close, he called 911. He then went out on the porch; Jesse and the woman were there. Wilson told Jesse he had been robbed.

Jesse testified to the following: Appellant emerged from the house, ran to his bicycle, got on it and rode off. Approximately 30 seconds later, Wilson came out of the house and stated he had been robbed, at which point Jesse got on his bicycle and rode after appellant. Shortly thereafter, a police car drove by Jesse at a high rate of speed, and the officer apprehended appellant.

According to police testimony, when appellant was taken into custody he had in his possession “a half cut envelope ... from Wachovia Bank” and some good luck charms. He did not have a knife and he had only “a couple of dollars.” Police searched the route appellant took as he was fleeing, but did not find a knife or any money.

Appellant testified to the following: One day in October 2010, he was with his girlfriend, Christy Smith, on the way to a methadone clinic. Appellant had borrowed a bicycle, and for a while Smith was riding it. However, she had a painful foot condition and at one point she could no longer pedal the bicycle, so appellant began riding it. Smith approached some people outside the Boyd house and told them she needed to go to the hospital.

Appellant further testified to the following: At one point, he saw a “white envelope” on the ground. He picked it up and put it in his pocket. Appellant has never

robbed anybody, carried a knife, or threatened anybody with a knife. He never entered the Boyd house.

## DISCUSSION

Appellant argues, as best we can determine, that he was denied his constitutional right to the effective assistance of counsel because, he asserts, his trial counsel (1) incorrectly advised him that his maximum sentence exposure was eight years, and (2) failed to call Christy Smith as a witness.

To establish a violation of the Sixth Amendment right to the effective assistance of counsel, a criminal defendant must show both deficient performance—“that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates,” and prejudice—“that it is reasonably probable a more favorable determination would have resulted in the absence of counsel’s failings.” (*People v. Price* (1991) 1 Cal.4th 324, 386.)

What appellant’s attorney did or did not tell appellant is not reflected in the appellate record. Therefore, appellant’s claim that his attorney misadvised him is not cognizable on appeal. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1183 [“review on a direct appeal is limited to the appellate record”].)

As to appellant’s second claim of inadequate representation, there is nothing in the record that suggests, much less establishes, that Smith’s testimony would have been of any benefit to appellant. Therefore, appellant has failed to meet his burden of establishing that counsel’s failure to call Smith as a witness was either objectively unreasonable or prejudicial. Accordingly, his claim of ineffective assistance of counsel fails.

It appears that appellant also contends the evidence was insufficient to support the count 1 and count 2 weapon use enhancements because the police did not find a weapon. There is no merit to this contention. The testimony of a single witness is sufficient to support a sentence enhancement finding. (*People v. Vega* (2005) 130 Cal.App.4th 183,

1990.) Here, as indicated above, Wilson Boyd testified appellant held a knife to his throat.

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

**DISPOSITION**

The judgment is affirmed.