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

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE LYNN DITTRICH,

Defendant and Appellant.

F068798

(Tuolumne Super. Ct.
No. CRF41422)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Eric L. DuTemple, Judge.

Julia Freis, 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 Levy, Acting P.J., Poochigian, J. and Peña, J.

INTRODUCTION

Appellant/defendant Michelle Lynn Dittrich pleaded guilty to four felony offenses, and was sentenced to six years, for calling in fraudulent prescriptions to pharmacies for controlled substances. On appeal, her appellate counsel has filed a brief that 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 affirm.

FACTS

Count X; Commercial Burglary

On April 5, 2013, the Twain Harte Pharmacy received a call for a hydrocodone prescription for “Larry Schrader,” defendant’s husband. Later that day, defendant arrived to pick up the prescription. The pharmacy was only able to fill half the prescription based on the Medi-Cal reimbursement.

On April 8, 2013, the pharmacy received a refill order for the same prescription. The pharmacy filled the prescription and defendant picked it up.

On April 11, 2013, the pharmacy received yet another prescription for the same person and drug. The pharmacy became suspicious and called the prescribing doctor. The doctor said “Larry Schrader” was not a patient, and the doctor had not called in the prescription.

Count IV; Conspiracy

On June 6, 2013, CVS pharmacy in Sonora received a telephone call from a woman who said she was with the Tuolumne Mi Wuk Indian Health Clinic. The woman ordered a prescription for Norco and Clonazepam for “Michele Walker.” The clinic did not have such a patient and had not called in the prescription.

A few hours after the call, defendant and her mother, Carol Pais, arrived at CVS to pick up the prescription. Defendant was paying for the drugs when the police arrived. Defendant gave a false name. Defendant was arrested and admitted she called in the fraudulent prescription.

Counts I and II; Conspiracy and Commercial Burglary

On June 7, 2013, a woman called the Community Pharmacy at Sonora Regional Medical Center and identified herself as “Brenda” from Dr. Walsh’s office. She ordered a prescription for 90 Norco pills for “Lorrie Hooper.” The pharmacist was suspicious and called the medical center. The pharmacist learned Dr. Walsh did not have a patient by that name, and he never ordered a prescription.

The pharmacy had captured the caller’s number and gave it to the police department. An officer called the number and reached defendant’s voicemail.

About an hour later, defendant arrived at the pharmacy, identified herself as Lorrie Hooper, and tried to pick up the prescription. She was told it was not ready. The pharmacy called the police while defendant waited. The pharmacy then received a telephone call from a woman who said she was Lorrie Hooper’s mother, and she asked about the prescription. She was told it was not ready. The pharmacy captured the caller’s number and it belonged to Pais.

The police stopped defendant and Pais as they left the pharmacy. Defendant gave a false name and birth date. Pais was asked about the prescription. She gave a variety of stories but ultimately admitted defendant used different names to obtain prescriptions.

Procedural History

On June 11, 2013, a complaint was filed in the Superior Court of Tuolumne County, charging defendant and Pais with the following offenses:

Count I, conspiracy to commit burglary and obtain a controlled substance by fraud (Pen. Code, § 182);¹ count II, commercial burglary (§ 459); and count III, obtaining a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on June 7, 2013.

Count IV, conspiracy to commit burglary and obtain a controlled substance by fraud (§ 182); count V, commercial burglary (§ 459); and count VI,

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

obtaining a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on June 6, 2013.

Count VII, conspiracy to commit burglary and obtain a controlled substance by fraud (§ 182); count VIII, commercial burglary (§ 459); and count IX, obtaining a controlled a substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on May 1, 2013.²

Defendant was separately charged with the following offenses:

Count X, commercial burglary (§ 459); and count XI, obtaining a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on April 5, 2013.

Count XII, commercial burglary (§ 459); and count XIII, obtaining a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on April 8, 2013.

Count XIV, commercial burglary (§ 459); and count XV, obtaining a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)), committed on April 11, 2013.

On June 19, 2013, defendant waived a preliminary hearing, the complaint was deemed an information, and defendant was held to answer.

Plea and Sentencing

On September 16, 2013, defendant entered into a negotiated disposition. She pleaded no contest to counts I and IV, conspiracy to commit burglary and obtain a controlled substance by fraud, and counts II and X, commercial burglary, and admitted one prior prison term enhancement, with the sentence not to exceed six years in local jail. Defendant admitted that she violated two separate grants of felony probation. The court granted the prosecution's motion to dismiss the remaining charges and allegations.

On December 2, 2013, the court denied probation and sentenced defendant to the upper term of three years for count I; and consecutive subordinate terms of eight months (one-third the midterms) for counts II, IV, and X, plus one year for the prior prison term

² The complaint alleges these offenses were committed at Safeway Pharmacy; the probation report is silent as to the facts.

enhancement, for an aggregate term of six years to be served locally. It also imposed two years for the probation violations, suspended the terms, and ordered defendant to be supervised by the Post Sentence Release program.³

On or about January 30, 2014, defendant filed a timely notice of appeal and requested a certificate of probable cause. The court denied the request.

DISCUSSION

As noted above, defendant's 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 his own brief with this court. By letter on May 12, 2014, 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.⁴

DISPOSITION

The judgment is affirmed.

³ Codefendant Pais pleaded guilty to count I, conspiracy, and count II, commercial burglary; and she admitted a probation violation, and would be sentenced to one year in jail and two years in post-release community supervision.

⁴ Nothing in this opinion precludes defendant from filing a petition in the superior court under section 1170.18 (Proposition 47), if applicable.