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

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EDWARD LOVELADY,

Defendant and Appellant.

F069486

(Super. Ct. Nos. MCR043060A and
MCR039916A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Mitchell C. Rigby, Judge.

Theresa Osterman Stevenson, 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 Levy, Acting P.J., Kane, J. and Smith, J.

INTRODUCTION

Appellant Steven Edward Lovelady pleaded guilty to one count of grand theft (Pen. Code, § 487, subd. (a)/count 1), and admitted three prior prison convictions (Pen. Code, § 667.5, subd. (b)), in case No. MCR039916A. He also pleaded guilty to one count of felony evading with a vehicle (Veh. Code, § 2800.2, subd. (a)/count 1), one count of felony possession of stolen property (Pen. Code, § 496, subd. (a)/count 2), two counts of misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1)/counts 3 & 5) and admitted: (1) two special allegations under Pen. Code, § 12022.1; (2) having suffered two prior prison terms (Pen. Code, § 667.5, subd. (b)); and (3) a strike prior (Pen. Code, § 667, subds. (b)-(i)), in case No. MCR043060A. The trial court sentenced appellant to a total term of nine years and four months.

On June 2, 2014, appellant, acting in propria persona, filed a timely notice of appeal. The trial court granted a certificate of probable cause. Appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) identifying no arguable issues and asking this court to independently review the entire record on appeal. The brief further requested the court address the following issues:

1. “Whether the trial court abused its discretion at sentencing by not analyzing the factors in mitigation and aggravation to potentially exercise its discretion to strike his strike prior for purposes of sentencing and whether he should be afforded relief of reconsideration of sentencing based upon ineffective assistance of defense counsel in case no. MCR043060A for failing to make a *Romero*¹ motion argument at sentencing to request the court strike appellant’s strike prior.

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

2. “Whether this Court should reduce appellant’s conviction in case no. MCR043060A for violating Penal Code section 496, subdivision (a) to a misdemeanor, pursuant to Proposition 47.”

This court thereafter issued a letter inviting appellant to file a supplemental brief. No supplemental brief was filed.

Our independent review of the record did not discover any arguable factual or legal issues. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Case No. MCR043060A

Following a report by a Madera Irrigation District (District) employee of the theft of a steel pipe gate, a steel screen grate and three metal steel wheels owned by the District, appellant was identified as selling stolen items to a recycler. In the course of the investigation, appellant was observed leaving his home in his vehicle. Several sheriff’s deputies attempted to make a traffic stop. Appellant failed to stop and a pursuit ensued. After 15 to 20 minutes, appellant stopped and exited his vehicle. Following advisement of his *Miranda*² rights, appellant admitted he knew the deputies were behind him, but stated he was attempting to help his passenger who was a parolee at large. Appellant admitted that he had recycled the gate and grate, but denied taking the items from the District, claiming he took the items from the residence of his associate. Tire tracks matching the tires on appellant’s car were found on District property.

On May 31, 2012, an information was filed charging appellant with one count of felony evading with a vehicle (Veh. Code, § 2800.2, subd. (a)), one count of felony possession of stolen property (Pen. Code, § 496, subd. (a)), and two counts of misdemeanor resisting arrest (Pen. Code, § 148, subd.(a)(1)). The information further alleged that appellant committed the offenses while out on bail in case No. MCR039916

² *Miranda v. Arizona* (1996) 384 U.S. 436.

within the meaning of Penal Code section 12022.1, and that appellant had suffered two prison priors within the meaning of Penal Code section 667.5, subdivision (b), and a prior strike within the meaning of Penal Code section 667, subdivisions (b) through (i). On January 15, 2013, appellant pleaded guilty to all charges and allegations.

Case No. MCR039916A

On January 18, 2011, Union Pacific Railroad Police Officer Timothy Souza, Jr., received a report from Lee Taylor, one of the railroad's signal maintainers, that Taylor was investigating a malfunction of one of the railroad's signals when he observed a white truck with the words "Grease Collectors" on the side of the truck leave the area. Taylor determined that the signal wire had been cut and dragged into an orchard, where he found 1,500 feet of copper signal wire lying on the ground next to the white truck he had seen earlier. The driver of the truck identified himself to Taylor as Shawn Strength.

Officer Souza determined the white truck belonged to a business called "Grease Collectors," owned by appellant's brother Mark Lovelady. Mark told Officer Souza that appellant usually drives the truck, but Strength was also an employee of the company and on occasion had permission to drive the truck.

Officer Souza and Detective Daniel Kerber of the Madera County Sheriff's Department attached a global positioning system (GPS) surveillance device to the "Grease Collectors" truck on January 27, 2011, and began monitoring its movements. On January 30, 2011, at approximately 11:00 p.m., the truck was tracked to be on the railroad's property near Avenue 7. Within 15 to 20 minutes there was a signal disruption that was determined to have been caused by signal wires being cut. Thereafter, approximately 750 feet of copper signal wire was located in an orchard along the track. Officer Souza and Detective Kerber followed the GPS signal from the truck to a residence where they contacted appellant, at approximately 12:15 a.m. or 12:30 a.m. Appellant told Officer Souza and Detective Kerber that he was the only one who had driven the truck that night, but denied driving in the area of Avenue 7. Officer Souza and

Detective Kerber found bolt cutters with small shards of copper on the floorboard of the truck.

On September 16, 2011, an information was filed charging appellant with one count of grand theft (Pen. Code, § 487, subd. (a)) and one count of felony vandalism (Pen. Code, § 594, subd. (a)). The information further alleged that appellant had suffered a strike prior within the meaning of Penal Code section 667, subdivisions (b) through (i), and three prison priors within the meaning of Penal Code section 667.5, subdivision (b). On November 26, 2013, appellant pleaded guilty to grand theft and admitted the prison prior allegation. Pursuant to the plea agreement, the court dismissed the vandalism charge with a *Harvey*³ waiver. The court struck the strike allegation for purposes of sentencing.

On April 25, 2014⁴, the court sentenced appellant in both cases as follows: The aggravated term of three years, doubled due to the strike, for a total of six years for the felony evading with a vehicle violation in case No. MCR043060A, with a consecutive term of one-third the middle term (16 months) for possession of stolen property; and a concurrent term of three years for the grand theft in case No. MCR039916A, with two years to run consecutive for the prison prior allegations. Pursuant to Penal Code section 1385, and the plea agreement, the court struck the prison prior allegation and the out on bail enhancement allegation in case No. MCR043060A. The court imposed 365 days of local time with credit for time served for the two misdemeanor violations in case No. MCR043060A.

³ *People v. Harvey* (1979) 25 Cal.3d 754.

⁴ Appellant was originally sentenced on April 11, 2014. However, a hearing was held on April 25, 2014, to recalculate the time credits pursuant to the plea agreement.

DISCUSSION

After an independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

Insofar as appellant asserts that this court should reduce his conviction for violating Penal Code section 496, subdivision (a), to a misdemeanor pursuant to Proposition 47, appellant is required to bring a petition for resentencing in the trial court pursuant to Penal Code section 1170.18, subdivision (a)⁵.

Insofar as appellant asserts the court abused its discretion by not striking his prior strike for purposes of sentencing or that he was afforded ineffective assistance of counsel for failing to make a *Romero* motion seeking to strike his strike prior at the time of sentencing, neither this court's review of the record, including appellant's extensive criminal history, nor any factors suggested by appellant, suggest that appellant was entitled to such relief.

DISPOSITION

The judgment is affirmed.

⁵ Penal Code section 1170.18, subdivision (a) provides:

“A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (“this act”) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.”