

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON RAY CONRAD,

Defendant and Appellant.

F070762

(Super. Ct. No. BF153122A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Gary T. Friedman, Judge.

Caitlin Christian, under appointment by the Court of Appeal, for Defendant and Appellant.

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

-ooOoo-

Aaron Ray Conrad was convicted of receiving stolen property. Appellate counsel filed a brief stating she could not identify any arguable issues in the record. After a thorough review of the record, we agree and affirm the judgment.

* Before Levy, Acting P.J., Franson, J. and Peña, J.

FACTUAL AND PROCEDURAL SUMMARY

The information charged Conrad with burglary (Pen. Code, § 459)¹ and possession of stolen property (§ 496, subd. (a)). Both counts of the information also alleged Conrad had suffered a prior conviction which constituted a strike pursuant to the provisions of section 667, subdivisions (b)-(i). The burglary count alleged Conrad had suffered a prior serious felony conviction within the meaning of section 667, subdivision (a).

The victim, Sylvia Childers, owned a house in rural Kern County, but worked in Southern California. She stayed in Southern California during the work week, and returned to her Kern County home on weekends. When she arrived at her home on January 27, 2013, she discovered it had been burglarized. A window was broken, apparently to gain entrance to the property, and shoe prints were discovered leading to an adjacent property. Childers saw some of her stolen items in plain view on the adjacent property. When the deputies conducted a search of the trailer and shed on the adjacent property, they discovered many items of Childers's property. Childers estimated the value of the stolen property at around \$10,000, and confirmed that neither Conrad nor anyone had permission to take her personal property.

Kern County Deputy Sheriff Theodore Costello investigated the burglary of Childers's property. He discovered a window was broken, which allowed the perpetrator to gain entrance to the house. He also discovered shoe tracks leading to and from Childers's property to the adjacent property. The shoe tracks had a diamond shape pattern.

On the adjacent property was a fifth wheel trailer. The trailer was full of various items of personal property as was a shed located on the property. Inside the trailer,

¹ All statutory references are to the Penal Code unless otherwise stated. The information actually charges Conrad with violating section 460, subdivision (a). Section 460 defines first and second degree burglary. The crime of burglary is defined in section 459.

Costello located a piece of old mail addressed to Conrad, and Conrad's expired driver's license. Also found inside the trailer were a pair of boots with a tread pattern similar to the shoe tracks Costello located on Childers's property and on the adjacent property.

The final piece of evidence was a recording of a phone call Conrad made from the jail. In the phone call, Conrad stated that the boots discovered in the trailer were too small to fit him, so he thought he would not be convicted of burglary. He concluded with, "So you know, it's obvious. Yeah, the stolen property was in my, in my tra, my storage trailer. So I'm in trouble for having stolen stuff. I know that. But I didn't do the burglary."

The prosecutor argued the elements of each crime were committed. The defense argued there was no evidence that Conrad committed the burglary, and asserted there was no reliable evidence the value of the stolen property exceeded \$950, so at most Conrad was guilty of misdemeanor possession of stolen property. The jury found Conrad not guilty of burglary, but guilty of felony possession of stolen property. Conrad waived his right to have the jury determine the truth of the prior strike allegation, and in a bifurcated proceeding the trial court found it was true.

The trial court denied Conrad's suggestion that it strike the prior strike conviction pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. It then sentenced Conrad to the upper term of three years, which was doubled because of the prior strike conviction for a total term of six years in prison.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting that after reviewing the record she could not identify any arguable issues. By letter dated June 15, 2015, we invited Conrad to inform us of any issues he wished us to address in this appeal. Conrad did not respond to our invitation.

After thoroughly reviewing the record we agree with appellate counsel there are no arguable issues in this case. There were only two charges, and the evidence was

limited to the victim, the investigating sheriff deputy, and the custodian or records for the county jail who authenticated the phone call made by Conrad from the jail. The parties agreed on the jury instructions, the argument was limited to the facts of the case, and the jury returned a favorable verdict for Conrad. The trial court acted well within its discretion in denying Conrad's motion to strike his prior conviction, and when it sentenced Conrad to the upper term.

DISPOSITION

The judgment is affirmed.