

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN LAKE,

Defendant and Appellant.

G044599

(Super. Ct. No. 07NF3638)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Affirmed.

Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Steve Oetting and Lise S. Jacobson, Deputy Attorneys General, for Plaintiff and Respondent.

An information charged John Lake with 10 counts of residential burglary (counts 1-10), two counts of vehicle theft (counts 11-12), one count of receiving stolen property (count 13), and two counts of unauthorized use of an automated teller machine (ATM) access card (counts 14-15). In addition, the information alleged Lake had sustained five prior felony convictions or “strikes,” under the “Three Strikes” law, two prior serious felony convictions pursuant to Penal Code section 667, subdivision (a)(1),¹ and had served one prior prison term (§ 667.5, subd. (b)).

Lake, acting as his own attorney, successfully moved to dismiss counts 1, 2 and 4 at the conclusion of the prosecution’s case-in-chief. The jury found him not guilty of count 8, but guilty of counts 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 15. The jury also found true allegations he had suffered three prior strikes and one prior serious felony conviction. The court dismissed the prior prison term allegation on motion of the district attorney and sentenced Lake to consecutive terms of 25 years to life on all counts except count 13 (which the court stayed pursuant to section 654) and added 10 years for each of the prior serious felony convictions to each count for a total term of 350 years to life.

On appeal, Lake challenges the sufficiency of the evidence to support count 10, claims the court erroneously denied his request to revoke his propria persona status and appoint counsel for trial, and argues error in denial of his request for the appointment of counsel for sentencing. He also claims the court erroneously denied his request to strike priors pursuant to section 1385. None of these contentions has merit and we affirm the judgment.

FACTS

Because Lake’s challenge to the sufficiency of the evidence is limited to a single count, we need not provide details related to all the charges. As an overview, Lake was found guilty of burglarizing five hotel rooms, using the credit cards of two of his

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

victims to make purchases, and stealing two cars. He was apprehended driving a stolen car into a motel parking lot on October 6, 2007. He had the keys to another stolen car in his pocket.

During September and the early part of October 1997, Lake entered several motel rooms while the occupants were out and their rooms were being cleaned. He sometimes represented himself as the room's occupant and asked the housekeeper to wait outside while he used the restroom. On other occasions, he was seen leaving motel rooms occupied by other people after he removed various items including their credit cards. Subsequent unauthorized charges to these credit cards and his apprehension in a stolen vehicle led to Lake's arrest and the recovery of a number of stolen items.

Count 10 alleged that on October 3, 2007, Jeffrey Zobell stayed in room number 733 of the Anaheim Doubletree Hotel. On that day, he left his room at approximately 1:00 p.m. and returned around 9:00 p.m. When he returned, he noticed a number of personal items were missing, including his iPod and articles of clothing. When police officers responded to the hotel, a maid told officers she had been cleaning room 733 earlier in the day when a man entered the room and told her to leave so he could use the restroom. She complied. Later, she identified Lake as that man from a photographic lineup. At trial, the woman's testimony differed somewhat. In court, she said she had been cleaning rooms on the fifth floor on September 28, 2007, and Lake entered room 527. None of Zobell's property was recovered.

DISCUSSION

Sufficiency of the Evidence to Support Conviction on Count 10

Count 10 of the information charged, "On or about October 03, 2007, in violation of Sections 459-460(a) of the Penal Code (FIRST DEGREE RESIDENTIAL BURGLARY), a FELONY, JOHN LAKE did unlawfully enter an inhabited dwelling house, trailer coach, and inhabited portion of a building, inhabited by J. Zobell (Doubletree Hotel), with the intent to commit larceny." Relying on the discrepancy

between the maid's initial statement and her trial testimony, Lake argues there was insufficient evidence to prove he stole items from Zobell's motel room on October 3, 2007. We disagree.

“When an appellant challenges the sufficiency of the evidence to support a conviction, the appellate court reviews the entire record to see “whether it contains substantial evidence – i.e., evidence that is credible and of solid value – from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.”” [Citation.] We view the facts in the light most favorable to the judgment, drawing all reasonable inferences in its support. [Citations.] We do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. [Citations.]” (*People v. Cochran* (2002) 103 Cal.App.4th 8, 12-13.)

Our review of the whole record reveals substantial evidence to support Lake's conviction of burglarizing Zobell's hotel room on October 3, 2007. Despite the discrepancies between the maid's out-of-court statement and her trial testimony, Lake's conduct is not in dispute. The maid positively identified him as the person who impersonated the hotel room's occupant and asked her to leave while he used the restroom. The jury was charged with weighing the credibility of the testimony of both the maid and the investigator who later interviewed her and testified the theft took place in room 733 on October 3, 2007. The jury was properly instructed that it could believe “all, part or none of any witness's testimony,” and instructed to consider various factors, including the passage of time, when making a credibility call. We do not, and need not, know whether the jury believed every aspect of the maid's trial testimony; it is not required to do so in order to find Lake guilty. (See *People v. Reyes* (1987) 195 Cal.App.3d 957, 965.) In carrying out its responsibility for determining what happened, the jury found enough of the maid's statement and the corroborative testimony of the investigating officer credible to establish beyond a reasonable doubt that Lake

burglarized Zobel's hotel room on or about October 3, 2007. We find no legal cause to second-guess the jury's determination.

Faretta Motion

After the felony complaint was filed in October 2007, Judge James E. Rogan granted Lake's request to represent himself under *Faretta v. California* (1975) 422 U.S. 806. Over the next three years, Lake filed over 100 motions, which together comprise the bulk of seven volumes of clerk's transcript. Topics ranged from requests for non-collect telephone calls and access to legal materials to demands for a Kosher diet and special orthotics.

Interspersed between his complaints about jail conditions, Lake would periodically request the appointment of counsel or advisory counsel, but invariably he became dissatisfied with any attorney appointed and then would file a *Marsden*² motion and request self-representation. The court appointed and relieved three defense investigators after Lake repeatedly complained about each one. One of the investigator's, Joseph Szeles, was replaced after an unflattering article appeared in the March 11, 2010 OC Weekly, about his past employment with the Riverside Sheriff's Department and his apparent monopoly over the court's appointment of defense investigators. The other two investigators ultimately declared a conflict of interest and were relieved. At various times, Lake also accused the district attorney's office and the court of misconduct and/or bias, and he filed several unsuccessful Code of Civil Procedure section 170.6 motions to disqualify the judge.

By October 2010, Lake's case had been continued numerous times at his request, but it had a trial date in November. On October 27, he filed a motion complaining about monitored telephone calls and jail personnel interfering with his legal materials. On November 1, he requested the appointment of advisory counsel which the

² *People v. Marsden* (1970) 2 Cal.3d 118.

court denied after finding Lake had abused his propria persona status. Lake renewed his request for advisory counsel and claimed the jail staff mistreated him and withheld his medication which interfered with his ability to prepare for trial. With a jury trial scheduled to start on November 1, 2010, Lake said he no longer wanted to represent himself “because of the court’s rulings” The court stated, “Mr. Lake, I am not entertaining any further motions that I have already ruled on on your behalf. It is time to go to work.” The court also denied Lake’s renewed request for advisory counsel. When the court asked Lake if he had retained counsel “that is available,” Lake said “No, I do not, your honor.”

After some further discussion, the court ruled as follows: “[T]he court at this time is denying the defendant’s request for withdrawal or for a waiver of counsel. The court has taken into account the fact that the defendant has represented himself for almost three years. The stage of the proceedings: we are about ready to pick a jury. To allow this to happen at this time would substantially disrupt and delay the orderly administration of justice. [¶]...[¶] So your request, if it is a request, and I am not even confident it is a request to withdraw your pro per status and have the court appoint counsel at this time is denied.”

Generally, when a defendant who is representing himself requests the reappointment of counsel, the court must exercise its discretion by considering “the totality of the facts and circumstances.” (*People v. Gallego* (1990) 52 Cal.3d 115, 164.) Some of the relevant factors to consider are: “(1) defendant’s prior history in the substitution of counsel and the desire to change from self-representation to counsel-representation, (2) the reasons set forth for the request, (3) the length and stage of the trial proceedings, (4) disruption or delay which reasonably might be expected to ensue from the granting of such motion, and (5) the likelihood of defendant’s effectiveness in defending against the charges if required to continue to act as his own attorney” [Citation.]” (*Ibid.*) “While the consideration of these criteria is obviously relevant and

helpful to a trial court in resolving the issue, they are not absolutes, and in the final analysis it is the totality of the facts and circumstances which the trial court must consider in exercising its discretion as to whether or not to permit a defendant to again change his mind regarding representation” (*Ibid.*)

Lake’s numerous pretrial maneuvers, which included multiple *Faretta* motions, requests for reappointment of counsel and advisory counsel, *Marsden* motions, and unsuccessful attempts to recuse the prosecutor and disqualify the court, provide ample evidence in support of the court’s conclusion that his latest somewhat ambivalent request for counsel was merely part and parcel of his ongoing attempt to manipulate the court and thereby avoid trial. As the court noted, Lake took full advantage of his *propria persona* status to delay and obfuscate. Enough is enough.

Moreover, the reason for Lake’s request is unpersuasive. Although he claimed incompetence, the record reveals that he is well-versed in the law, loquacious and tenacious. Thus, his last-minute professed inability to effectively represent himself is contradicted by the record.³ Finally, granting Lake’s last-minute request for counsel would have caused substantial disruption to the court’s administration of justice. The case had been continued several times at Lake’s request which was the reason the case remained on the court’s calendar for over three years. Furthermore, Lake provided no information concerning how long a continuance would be required had the court granted his request. He had not contacted or retained counsel, and the appointment of counsel or advisory counsel would have further delayed a long-overdue trial to permit counsel to adequately prepare. Thus, considering the totality of the circumstances we conclude Lake engaged in a kind of game-playing courts need not tolerate. (*People v. Clark* (1992) 3 Cal.4th 41, 115.) In short, the record amply supports the court’s ruling Lake’s

³ According to the OC weekly, one of his investigators “jokingly” described him as “the dean of the pro per defendants.”

request for the appointment of counsel or advisory counsel was both untimely and an improper attempt to manipulate the proceedings.

We reach the same result with Lake's contention the court abused its discretion and violated his constitutional rights by not appointing counsel to represent him at the sentencing hearing. In the first place, Lake failed to articulate a clear desire for representation at the sentencing hearing. But even if he had, we would find no error in the court's various rulings and the imposition of sentence.

The sentencing hearing was scheduled for December 17, 2010. The court ordered the preparation of a probation and sentencing report, and advised the prosecution a restitution hearing would be conducted on the same date. Lake requested the court appoint an investigator to assist him. The court denied his request. A few days later, Lake telephoned the court and spoke to a court clerk. According to the court's minutes, Lake said he wanted the court to appoint Alfredo Rasch to be his investigator. The court denied the request. The court did however grant Lake leave to file a motion for a new trial to be heard in conjunction with the sentencing hearing. A few days later, Lake filed a motion to continue, a motion and declaration for ancillary services, and a motion for court-ordered transcripts. The court permitted Lake to file the motion to continue. However, the other two motions were not filed "due to the Defendant's history of filing multiple and frivolous motions."

Undeterred, Lake filed a document with this court in which he challenged the trial court's ruling. We treated the document as a petition for extraordinary writ and granted him five days to file any supplement documents, petitions, declarations, or any other document he deemed necessary. Meanwhile, the prosecution filed its sentencing brief and statement in aggravation, the gist of which was that Lake should be sentenced to a determinate term of 110 years in addition to an indeterminate term of 250 years to life.

On December 15, the court ordered a deputy sheriff to be present at the sentencing hearing so that the court could question him under oath because Lake claimed

the deputy removed legal materials from his cell. On December 17, the date set for the sentencing hearing, the court questioned Orange County Deputy Sheriff Kevin Archambault and received two exhibits, both of which were related to Lake's access to legal materials. After the hearing, the court denied Lake's motion to continue the sentencing hearing.

A lively sentencing hearing followed. When the court tried to advise Lake of the charges and the verdicts against him, he interrupted the court and said he "ha[d] other motions to file." The court warned Lake to stop interrupting or face removal pursuant to section 1043, subdivision (b)(1), and then proceeded to arraign Lake for sentencing. When the court inquired if there was any legal cause why sentence should not be imposed, Lake mentioned the writ proceedings, and a request to disqualify the judge, and a motion for a new trial. When the court asked for specific grounds for Lake's motion for new trial, Lake complained he had been denied "substantial rights during the trial, not having an investigator to be able to be called on, not being allowed to have my investigators that were previously in my case to be called on to be able to give testimony in my case, not to be allowed the opportunity and sufficient time." He also claimed to have newly discovered evidence, which he explained meant that one of the witnesses had been under duress during her testimony. He also mentioned judicial and prosecutorial misconduct. The court denied Lake's request to file a written motion for new trial because it was untimely, heard further argument on the matter and denied the motion.

The court determined there was no legal cause why judgment should not be entered and imposed a total prison sentence of 350 years to life. As discussed below, there was little counsel could have done to remediate the sentence. The court followed the dictates of the Three Strikes sentencing scheme in sentencing a career criminal. While we agree a sentence of 350 years to life seems meaningless when compared with Lake's probable lifespan, this is not grounds for reversing the judgment or modifying the

sentence. In short, Lake fails to demonstrate a denial of constitutional rights or an abuse of discretion.

Section 1385

Lake claims the court abused its discretion by denying his request to strike prior convictions pursuant to section 1385. We disagree.

Section 1385, subdivision (a) provides, “The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.” This section authorizes a court to dismiss findings a defendant committed one or more prior serious or violent felony convictions to avoid the application of the Three Strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 151-152, 158-159; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504.) We review such decisions for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374-375.) There was no abuse of the court’s discretion here.

Lake asked the court to dismiss the five prior residential burglary convictions alleged in the information as strikes because they occurred in 1991. As Lake explained, “Your honor, the judge in Riverside stated that I had no previous strikes and struck all my strikes at that time. That’s the superior court making that same thing. Plus, those strikes when – that you’re talking about, when I received way back in ’93, at that time, your honor, that’s more than five years, let alone more than 20 years ago, and at that time, there was no Three Strikes law. There was no – at that time, as I mentioned before, the contract that I had with my public defender at that time was that there is no strikes. So at the same time, your honor, because of the amount of time in between that crime and this so-called crime that I committed now, that’s more than 30 years, they should not be considered strikes as the judge in Riverside stated himself.”

This argument would have been more persuasive *if* Lake's criminal record were limited to those crimes he mentioned to the court. However, according to the probation report, Lake's contacts with law enforcement started around 1979. "Between 1979 and 1988, [Lake] was documented to have come in contact with law enforcement on eight occasions for offenses including Hit and Run, Use of Checks with Nonsufficient Funds, Vandalism, Driving on a Suspended License, False Identification to an Officer, Forgery, Receiving Stolen Property, Burglary, Grand Theft, and Theft. For these crimes, he was convicted of three misdemeanors for Use of Checks with Nonsufficient Funds (1982/Case: M106865/3 yrs. prob.); Vandalism (1982/Case: M165679/12 mos. prob./10 days jail); and Theft (1988/Case: GGW159745P0/36 mos. prob.)." In 1990, he entered the hotel rooms of the victims while they were being cleaned and acted as though the rooms were his and removed personal property, he opened a bank account with a forged check and cashed a stolen check, and he was convicted of multiple counts of burglary, forgery, receiving stolen property, vehicle theft and receiving stolen property. In 1993, Lake was convicted of forgery and grand theft after signing a contract for construction work, cashing the check he received, and failing to perform the work as agreed. He tried the same ploy in 2000, and in 2003 he stole his mother's car, money and jewelry. His record while incarcerated is no better with rule violations for lying, tampering with security devices, possession of contraband, failure to follow directives, creating disturbances, and on a few occasions, he has been placed in isolation for up to 10 days as an habitual rules violator. As the court noted, Lake "is the person that the Three Strikes [law] is about." It is difficult to find fault with that conclusion.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.