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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELA MONICA ZUNIGA,

Defendant and Appellant.

G045120

(Super. Ct. No. 10NF1928)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Gail Ganaja, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Kevin Vienna, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant Angela Monica Zuniga was convicted of second-degree robbery for her role in the theft of a cell phone from a victim named Rayanne after a scuffle in a parking lot. In fact, during the altercation Zuniga punched the victim in the face. Zuniga was one of three women who had gone to repossess a Honda Accord for Edgar Cervantes, a member of a west Anaheim street gang. In reality, the victim had loaned the Honda to Cervantes. The victim had recently retrieved it from him. When Zuniga was arrested some 10 days after the robbery, about 7.95 grams of methamphetamine was found in her backpack, and she was also convicted of possession for sale of a controlled substance.

The trial judge imposed the middle term of three years in prison for the robbery, and a two-year term for the possession of the methamphetamine, to run concurrently with the sentence for the robbery. Though Zuniga had a prior felony conviction for which she served a prison term, the trial judge struck that conviction. In this appeal Zuniga makes only one argument, which is that the judge abused his discretion in choosing the middle term of three years for the robbery. She argues, in light of several factors, that the judge was essentially compelled to give her the low term of two years. The factors center on her childhood traumas, including physical and sexual abuse, her own drug addiction, her mistake in assuming that the Honda was really Cervantes's, and her relative passiveness in only receiving the cell phone from one of her other cohorts during the scuffle.

No abuse of discretion is shown. Zuniga has a much more extensive criminal history than just the one prior prison sentence, including convictions for receiving stolen property and possession of a weapon. The judge noted she has *three* prior felony convictions. The robbery itself involved violence in which Zuniga punched the victim. The crime was calculated and involved two "crime partners." As a recidivist, Zuniga might have received the upper term. (*People v. Towne* (2008) 44 Cal.4th 63, 78.) Given Zuniga's participation in the violence in which the victim's cell phone was lost and

that recidivism, there can be no doubt that the trial judge's imposition of the middle term was within his discretion as best serving the interests of justice under Penal Code section 1170, subdivision (b). (Cf. *People v. Wilson* (2008) 164 Cal.App.4th 988, 992 [upholding imposition of upper term in light of “multiple prior convictions and continued abuse of controlled substances even while in residential treatment”].) The judgment is therefore affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.