Filed 7/31/12 P. v. Rodriguez CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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. ADAN SANTIAGO RODRIGUEZ, Defendant and Appellant.	G046008 (Super. Ct. No. 09CF3123) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dan McNerney, Judge. Affirmed as modified.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant Adan Santiago Rodriguez.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Adan Santiago Rodriguez appeals from the judgment and sentencing entered after a jury found him guilty of first degree residential burglary, in violation of Penal Code[1] sections 459 and 460, subdivision (a) (count 1), and of grand theft, in violation of section 487, subdivision (a) (count 2). The court sentenced Rodriguez to the middle term of four years for the first degree burglary, plus the middle term of two years for the grand theft, to run concurrent with the burglary conviction. Rodriguez contends his conviction for the grand theft must be stayed under section 654. The Attorney General concedes the error, and we agree. The proper remedy is to affirm, but modify the judgment to stay execution of the sentence on the grand theft conviction in count 2.

FACTS

On September 15, 2009, Rodriguez was hired as a telemarketer for a loan modification company called First Choice. He was provided with a list of prospective customers, and about a week later, under the supervision of a loan consultant, Rodriguez contacted Luis Maldonado. Maldonado had been unable to make his mortgage payments and was facing foreclosure on his Santa Ana home. Rodriguez told Maldonado that First Choice could help him stop the sale of the home and get a modification of his home loan.

The evening of Rodriguez's telemarketing call, Maldonado and his wife went to the First Choice office and met with Rodriguez and the loan consultant. Rodriguez translated as the loan consultant explained the terms of the agreement, and Maldonado agreed to pay First Choice $3,800 for their services in preventing the sale of his home and in modifying his loan. Over the following ten days, Maldonado and Rodriguez had frequent contact, both by phone and in person when Maldonado would bring requested documents to the First Choice office.

---

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

On Friday, October 2, 2009, Rodriguez called Maldonado to inform him the bank was not granting the modification, and it would be necessary to hire an attorney. Rodriguez further informed Maldonado the attorney would cost an additional $7,500. Maldonado only had $2,500 available, but was able to borrow $5,000 from his brother-in-law, and the following Monday, he called Rodriguez to let him know he had the full amount. Maldonado planned to have a friend drive him to the First Choice office to drop the money off, but when the friend's car broke down Rodriguez offered to pick up the money at Maldonado's home.

When Rodriguez arrived later that day, Maldonado was home with his wife and children. After making small talk for a few moments in the backyard, the two men returned to Maldonado's living room. Maldonado handed Rodriguez an envelope containing the $7,500, and when Maldonado asked for a receipt, Rodriguez told him to come into the office the next day. Maldonado's wife wrote a receipt by hand, but Rodriguez never signed it; it is unclear from the record whether Rodriguez saw the receipt and refused to sign it, or whether he never realized that Maldonado's wife had even written a receipt.

The following day, Rodriguez called Maldonado and told him he was in a Los Angeles Superior Court trying to stop the sale of the home. Rodriguez also told Maldonado he was working on his own, and did not want First Choice to know he was in court in Los Angeles. Suspicious, Maldonado went to the First Choice office and was informed that Rodriguez had called in sick that day.

On Wednesday, Maldonado returned to the First Choice office, and when he was told Rodriguez was not in again, he asked for the loan consultant whom he had met when he first signed the contract. Maldonado asked her for a receipt for the $7,500

he had given Rodriguez, but she refused because she had not authorized the transaction. The loan consultant called Rodriguez's phone number, but the line had been disconnected. The loan consultant suggested Maldonado file a police report, and the next day, she accompanied him to the Santa Ana Police Department to file a report.

Rodriguez never turned in a letter of resignation, but returned at some point to collect his final paycheck and to sign termination of employment paperwork. On December 14, 2009, Santa Ana police arrested Rodriguez at his home. Rodriguez admitted he had gone to Maldonado's home to pick up or drop off some paperwork. He denied any knowledge of the $7,500, but suggested to the police that First Choice had questionable business practices, and that the police should "take a look at" First Choice.

A jury convicted Rodriguez of residential burglary and found true an allegation that the residence was occupied by a non-accomplice within the meaning of section 667.5, subdivision (c)(21). The jury also found Rodriguez guilty of grand theft. The court sentenced Rodriguez to four years for the first degree burglary, plus a concurrent sentence of two years for the grand theft.

DISCUSSION

Rodriguez's sole contention on appeal is the trial court erroneously imposed a concurrent term for grand theft. Rodriguez maintains, and the Attorney General agrees, that the grand theft sentence should have been stayed under section 654 because both the residential burglary and the grand theft arose pursuant to a single intent and objective. We agree and therefore modify the judgment to stay execution of the sentence on the grand theft in count 2. We affirm in all other respects.

Section 654 reads: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." (§ 654, subd. (a).) "Under . . . section 654 a course of conduct undertaken with a single intent and objective that violates more than

one statute may be punished only once. [Citation.] Although a defendant may be convicted of both violations, punishment for one must be stayed. [Citation.] This principle has been applied in instances where the defendant has committed both . . . burglary and grand theft. [Citations.]" (*People v. Bernal* (1994) 22 Cal.App.4th 1455, 1458.)

The record shows Rodriguez's single intent and objective was to steal $7,500 from the Maldonados. Without authorization from First Choice, Rodriguez called Maldonado and told him additional money was needed to pay for an attorney. Rodriguez went to the Maldonado home for the express purpose of picking up the $7,500 whereupon he refused to provide Maldonado with a receipt. There is no evidence to suggest Rodriguez went to the Maldonado home with any additional or alternative intent or objective.

Normally, the trial court is vested with broad latitude in determining whether section 654 applies in a given case, and its "findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Here, Rodriguez waived his right to a probation report and was sentenced immediately following the trial. Therefore, neither counsel submitted sentencing briefs nor was there argument by either counsel as to sentencing. The court never addressed the application of section 654, but even if it had, we find no evidence in the record to suggest Rodriguez's course of conduct was undertaken with anything other than the single intent and objective to steal $7,500 from the Maldonados.

DISPOSITION

The two year concurrent sentence on count 2 is stayed. The trial court is directed to prepare a modified abstract of judgment staying the sentence on count 2, and to send a certified copy of the modified abstract of judgment to the Department of

Corrections and Rehabilitation, Division of Adult Operations. In all other respects, the judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.