

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

GEORGE VERNON GERRINGER,

Defendant and Appellant.

G047491

(Super. Ct. No. 12NF0291)

O P I N I O N

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

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Appellant George Vernon Geringer was convicted by a jury of two counts of second degree (commercial) burglary (Pen. Code, §§ 459-460), one count of petty theft (as a lesser necessarily included offense in a count charging robbery (Pen. Code, §§ 211, 488), and a count of receiving stolen property (Pen. Code, § 496), all arising from the same incident. The court sentenced him to two years and eight months in the county jail, consisting of the middle term for the first of the two burglaries and eight months consecutive for the second. Punishment for the petty theft and the receiving were stayed pursuant to Penal Code section 654.

Geringer appealed, and we appointed counsel to represent him. Counsel did not argue against his client, but advised this court he could find no issues to argue on appellant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel filed a brief which set forth the facts of the case and the only point counsel could imagine might support an appellate issue: sufficiency of the evidence. Geringer was given 30 days to file written argument in his own behalf, but no brief was filed.

We have considered the point raised by counsel, and have scoured the record – including the transcript of trial testimony – for other possible issues. We agree with appellate counsel's implied acknowledgment that the sentencing in the case was not legally objectionable. It was formally correct, and nothing about the midterm and a concurrent term for entering a business and stealing people's property leaps out at us as disproportionate. Nor is there any flaw in the evidence against appellant, who essentially confessed his misdeeds when confronted by a victim. And the only controversy in the trial itself was resolved in a way that comported completely with the court's discretion.

FACTS

Lyzette Hingco left her office at Western State College of Law to heat up her lunch. When she returned, she saw appellant – a total stranger – coming out of her office. He volunteered that he was “looking for someone.” Her suspicion about that

explanation was apparently evident because appellant then blurted out, “You want to search me? You want to search me?” Hingco stepped aside and appellant left.

But when she entered her office, she immediately determined her wallet was missing from her purse and she ran after him. She confronted him outside, telling him she knew he had taken her wallet and demanding that she give it back. He pushed her aside and went past her, but she followed him to the parking lot, continuing to demand her wallet. Finally he gave her the wallet, saying, “I’m sorry. My mom is in the hospital.”

Appellant was stopped minutes later by police who found another woman’s wallet and credit cards and cash. That woman also worked at Western State.

DISCUSSION

Defense put on no evidence. But defense counsel convincingly contended the prosecution’s evidence was insufficient to show a robbery on these facts. She successfully argued there was neither force nor fear shown. The jury acquitted on that count.

But to establish the credibility necessary to make that argument, counsel conceded the thefts of the wallets and the burglary. “Now did Mr. Gerringer go into the office and steal two women’s wallets? Yes. Did he enter those buildings with the intent to steal? Probably. . . . But what he did not do, he did not rob Ms. Hingco and that’s why we are here today.”

Confronted with a case in which her client was seen leaving the scene of the crime, caught with the stolen property minutes after its theft, and essentially admitted having taken it (“I’m sorry. My mom is in the hospital.”), counsel made what seems to have been a sound tactical decision to defend against the one count she had a chance to win. And she won. We can find no basis on which to fault trial counsel.

Defense asked for a mistrial at the close of the prosecution case because they had failed to produce the detective who had taken statements from the victim.

Counsel argued she could have impeached the victim with discrepancies between her testimony and the reports of the detective who took her statement. But the court pointed out that impeachment had already been accomplished via the reports and the preliminary hearing transcript. Defense lost nothing in not having the live detective to examine.

What's more, the issues on which counsel wished to impeach had to do with the robbery count, on which appellant was acquitted. So while they were live issues at the time, they are completely moot in terms of an appeal.

We can find nothing objectionable in appellant's trial, sentencing, or representation. We find ourselves in complete agreement with appellate counsel that there is no basis here for an appeal. The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.