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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.

VIVIAN TU BANH,

Defendant and Appellant.

G048493

(Super. Ct. No. 10CF3131)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
David A. Hoffer, Judge. Affirmed.

Vivian Tu Banh, in pro. per.; and Rex Adam Williams, under appointment
by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Introduction

A jury found defendant Vivian Tu Banh guilty of second degree robbery in violation of Penal Code sections 211 and 212.5, subdivision (c). The trial court sentenced Banh to a two-year prison term.

We appointed counsel to represent Banh on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. We have examined the entire record and counsel's *Wende* brief. (*Wende, supra*, 25 Cal.3d 436.) We find no arguable issue.

Banh was given the opportunity to file written argument on her own behalf. She filed a supplemental brief on December 24, 2013, and a second supplemental brief on January 7, 2014. We have reviewed and considered both of Banh's supplemental briefs, but find nothing in either of them to suggest the existence of a reasonably arguable issue. We therefore affirm.

Facts

In November 2010, Jaime Beltran received a telephone call from Banh offering to give him a massage. One or two days later, on November 12, Beltran called Banh back and she told him to meet her at a particular location. When he arrived at the agreed upon location, Banh got into Beltran's car and directed him to drive to a restaurant because she was hungry. After they had finished eating, Banh directed Beltran to drive to a motel where she would give him a massage.

After Banh and Beltran walked into a motel room, both removed all of their clothes and got on the bed. Banh then suddenly got up, put her clothes on, grabbed Beltran's wallet, and told him to pay her. She removed the money from his wallet. She also took his watch and the keys to his van, and opened the door to the motel room. Beltran told Banh she was not going to rob him, told her not to leave, and warned her he would call the police. Banh struck Beltran in the face many times, causing Beltran to

bleed. Banh went out to Beltran's van, collected her belongings that she had left there, put the keys in the van, and ran away with Beltran's money and watch.

Procedural History

Banh was charged in an information with one count of second degree felony robbery in violation of Penal Code sections 211 and 212.5, subdivision (c), and one count of grand theft in violation of Penal Code section 487, subdivision (c). The trial court suspended the criminal proceedings against Banh after a doubt arose in the court's and counsel's minds as to Banh's mental competence to stand trial. Following a hearing in November 2011, the trial court found Banh to be a mentally incompetent person within the meaning of Penal Code section 1368. In December, the court ordered Banh committed to Patton State Hospital for care and treatment, pursuant to Penal Code section 1370.

In April 2012, after receiving a certification of Banh's mental competence under Penal Code section 1372, the trial court held a restoration of competence hearing. The court found Banh was not mentally incompetent to stand trial, within the meaning of Penal Code section 1368, and ordered the criminal proceedings against her reinstated.

Before trial, the prosecution moved to dismiss the grand theft count; the trial court granted the motion. In March 2013, the jury found Banh guilty of second degree robbery, and the court sentenced Banh to the low term of two years in state prison. Banh appealed.

Analysis of Issues Raised in Banh's Supplemental Briefs

In her supplemental briefs, Banh raises several issues, none of which suggests the existence of a reasonably arguable issue. First, Banh asserts that she was not mentally competent to stand trial. She states that her mental incompetence was evidenced by her failure to appear in court on March 14, 2013, and because before and during trial, and while in custody, she was not provided her daily medication for her mental health issues. The record shows the trial court was very aware of Banh's mental

health issues, having declared her mentally incompetent in November 2011, and having committed her to Patton State Hospital. The record also shows Banh's mental competence was restored in April 2012, as determined by the court, following a hearing.

Nothing in the record suggests any circumstances that might raise a reasonable doubt as to Banh's mental competence after April 2012, or during trial which took place in March 2013. At the sentencing hearing, the trial court expressly stated that although it considered Banh's mental health issues as a mitigating factor in support of imposing the low prison term, it remained clear to the court that Banh was "capable of standing trial." The record does not mention, or otherwise support, Banh's contention that she was denied any medication before or during trial.

Next, Banh argues that she should have been placed on probation and that the deputy probation officer who interviewed her is racist because she did not talk to Banh or "pick up the paper work she mailed [to Banh]. She has no info yet deny my probation rights." The probation report reflects that Banh "did not wish to participate in a probation interview for purposes of this report." The deputy probation officer explained the recommendation to deny probation, as follows: "Unfortunately, the defendant did not wish to participate in an interview for purposes of this report; therefore, little is known about her past other than her history of arrests. It appears the defendant has a pattern of violent behavior, and it does not seem she has any respect for the community or the law. In addition to the instant offense, the defendant is pending two court cases in which she became violent with two different children for no reason. . . . Further, the defendant was not provoked in either incident, which is extremely concerning. The defendant clearly does not concern herself with the safety of others, and it appears likely she has engaged in the theft of others' property while giving massages, which may have not been reported. [¶] Considering all of the case factors, it is believed the defendant would not comply with the terms and conditions of probation as evidenced by her past behavior and, therefore, she is not considered a suitable candidate at this time. It appears the defendant is in need

of a commitment in custody which would hold her accountable for her actions, as well as impress upon her the severity of her conduct.” Banh does not argue that the facts underlying the deputy probation officer’s recommendation were inaccurate. There is nothing in the record that suggests the deputy probation officer’s recommendation was in any way discriminatory.

At the sentencing hearing, Banh’s trial counsel raised the issue that Banh was not interviewed by the deputy probation officer for the probation report. The trial court observed that it was very familiar with the case, having presided over the trial, but nevertheless invited Banh to request a continuance of the sentencing hearing and further request the preparation of a supplemental probation report. After consulting with Banh, counsel informed the court, in Banh’s presence, that Banh did not wish to request a supplemental probation report and that she “wished to proceed to sentencing.” We find no arguable issue that Banh was wrongfully denied probation.

Banh also asserts that “the calculation of my sentence time in jail is wrong. 20 days [are] missing from 422 days.” At the sentencing hearing, the court stated that it was giving Banh credit toward her prison sentence for the 111 days she was committed at Patton State Hospital. As Banh’s trial counsel calculated, the record shows that at the time of the sentencing hearing, Banh had served 271 days of actual time, spent 111 days in Patton State Hospital, and accrued 40 days’ conduct credit, for a total of 422 days’ custody credit. Nothing in the record suggests counsel’s custody calculation might have been in error.

In one of her supplemental briefs, Banh asserts her appellate attorney does not speak Vietnamese and states she now requests that an appellate attorney who speaks Vietnamese be appointed for her. The record does not show Banh ever requested an attorney who speaks Vietnamese in the trial court, but more significantly, the record does not show that Banh ever required such an accommodation. Banh’s supplemental briefs are handwritten in English. Banh testified during trial without the assistance of a

Vietnamese language interpreter. (In contrast, Beltran testified at trial with the assistance of a Spanish language interpreter.) At no time was the possible need for the assistance of a Vietnamese language interpreter ever raised in the trial court. At the conclusion of trial, the court noted how “intelligent and articulate” Banh was and otherwise complimented her on how she had conducted herself during trial. Banh’s request for the appointment of an appellate attorney who speaks Vietnamese is denied.

Banh also asserts her trial attorney “made a mistake” in that her battery assault case became upgraded to two felony counts. In a felony complaint, filed in November 2010, Banh was initially charged with a single count of second degree felony robbery. She was later charged in the information with not only second degree felony robbery, but also with grand theft. As discussed *ante*, the grand theft count, however, was dismissed by the trial court before trial in this matter.

Our review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, including the issues raised in Banh’s supplemental briefs, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Banh in this appeal.

Disposition

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.