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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL COLLINS,

Defendant and Appellant.

H037595

(Santa Clara County
Super. Ct. No. C1100778)

On September 2, 2011, a jury found defendant Michael Collins guilty of petty theft with a prior conviction for theft (Pen. Code, § 666, subd. (b)(1)),¹ but found him not guilty of second degree robbery (§§ 211, 212.5) and not guilty of making criminal threats (§ 422). Before trial, Collins admitted the allegations that he had suffered a prior strike and had served six prior prison terms. On November 8, 2011, after previously denying Collins' *Romero*² motion, the trial court sentenced Collins to a total term of 32 months in prison, consisting of the lower term of 16 months doubled due to the strike prior. The trial court struck Collins' prior prison commitments pursuant to section 1385. Collins was awarded 520 days of credits, consisting of 260 days of custody credits and 260 days of conduct credits.

¹ Further unspecified statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

We appointed counsel to represent Collins in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. We notified Collins of his right to submit written argument in his own behalf within 30 days. That period has elapsed, and we have received no written argument from Collins.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 22, 2011, Collins and Dennis Edwards were together in a public park in San Jose when they encountered two young men, Cesar Guardado and Jesse Rosas. Collins and Edwards approached the two men and Edwards asked to borrow Guardado's cell phone. Guardado agreed. After seeming to place a call, Edwards gave the phone back and asked if Guardado could wait a few more minutes so he could try to make the call again. While they were waiting, Collins pulled out an open bottle of alcohol from his pants pocket and offered Guardado and Rosas a drink. Guardado declined and Collins took a drink before putting the bottle back into his pants pocket. A few minutes later, Edwards used Guardado's phone to make a second call. After the second call, Edwards turned his back towards Guardado, but Guardado saw Edwards' and Collins' hands meet for a few seconds and saw something in their hands that looked like his cell phone. As Collins walked away, Guardado saw him put the phone in his jacket pocket. Rosas also saw Edwards pass the cell phone to Collins who then put it in his jacket pocket.

After he passed the cell phone to Collins, Edwards told Guardado he would retrieve the phone and pretended to fight with Collins. Edwards also offered Guardado some jewelry. A few minutes later, Collins started cursing and began walking away from everyone. Guardado took off his sweater and belt, wrapped his belt around his hand, and started pursuing Collins, yelling that Collins did not know who he was messing with. Collins repeatedly threatened Guardado saying, "I'll bust your head open if you touch me." Guardado first testified that Collins made these threats *after* he removed his belt and pursued Collins, then testified that Collins made the threats *before* he took off his belt and wrapped it around his hand.

After chasing Collins across the street, Guardado and Collins exchanged some words and Collins told him that Edwards had the phone. Moments later, a police car pulled up in response to a call made by Rosas. Collins was arrested and searched at the scene, but he did not have a cell phone on his person. Although a cell phone was found in Edwards' possession, it was not Guardado's. After searching the area approximately two hours, Guardado's cell phone was not located.

By amended information dated August 29, 2011, Collins was charged with second degree robbery (§ 211, count 1), making a criminal threat (§ 422, count 2) and petty theft with a prior theft conviction (§ 666, subd. (b)(1), count 3). The information further alleged that Collins had a prior strike conviction for first degree burglary (§§ 667, subds. (b)-(i), 1170.12) and had served six prior prison terms (§ 667.5, subd. (b)). Before trial commenced, Collins admitted the qualifying prior theft conviction, the strike prior and all six prison priors.

The jury found Collins guilty of count 3, but acquitted him on counts 1 and 2. At sentencing, Collins' *Romero* motion was denied, and the court struck the prison prior enhancements in the interests of justice (§ 1385). Collins was sentenced to the lower term of 16 months in prison, doubled to 32 months because of the strike prior. He was awarded custody credits of 260 days, plus 260 days of conduct credits. Collins was further ordered to pay a restitution fine of \$400 (§ 1202.4, subd. (b)) plus victim restitution in the amount of \$100. The court imposed and suspended an additional restitution fund fine pending Collins' successful completion of parole (§ 1202.45). Collins was also ordered to pay a \$40 court security fee (§ 1465.8), a criminal conviction assessment of \$30 (Gov. Code, § 70373), a crime prevention fund fine of \$10 (§ 1202.5) and "\$129.75 CJAF to the City of San Jose."

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the whole record and have concluded there is no arguable issue on appeal.

II. DISPOSITION

The judgment is affirmed.

Premo, Acting P.J.

WE CONCUR:

Mihara, J.

Márquez, J.