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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CLANCY RAY SMITH,

Defendant and Appellant.

H037959

(Monterey County

Super. Ct. No. SS111468)

On October 24, 2011, defendant Clancy Ray Smith pleaded guilty to one count of second degree robbery (Pen. Code, § 211)¹ as well as admitted allegations that he had suffered both a prior strike conviction (§ 1170.12, subd. (c)(1)) and had served a prior prison term (§ 667.5, subd. (b)). On December 15, 2011, after granting Smith's *Romero*² motion, the trial court struck the prior strike and the prior prison term allegation, along with all remaining charges, enhancements and special allegations. Smith was sentenced to the lower term of two years in prison, and awarded custody credits of 131 days and 19 days of conduct credits for a total of 150 days.

We appointed counsel to represent Smith in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. We

¹ Further unspecified statutory references are to the Penal Code.

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

notified Smith 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 Smith.

I. FACTUAL AND PROCEDURAL BACKGROUND

As Smith pleaded no contest to the charges, we derive the facts from the probation report and other documents in the record on appeal.

“On August 8, 2011, at about 2:00 A.M., a strong arm robbery occurred in the 1100 block of Ord Grove. Clancy Smith and Caleb Thomas were later positively identified by the victim in this case as being the two men who pushed her down to the ground, causing minor scrapes to her elbow and took an 18 pack of Budweiser beer, a black shopping bag containing three 24 ounce cans of Budweiser and the victim’s purse. Smith and Thomas then left the area, and were later located in the 1300 block of La Salle, at the Boys and Girls Club, and they were in possession of the 18 pack of Budweiser, and black shopping bag containing a three pack of 24 ounce Budweiser cans. [¶] The victim reported that both men came from the VFW hall, and approached her. One of the men started talking to her, and she ignored them and kept walking. One man then shoved her to the ground, and the other man picked up the bag, her purse and the 18 pack of Budweiser. [¶] After both Smith and Thomas were arrested and taken into custody, they were transported to the police station. They were Mirandized and interviewed separately. [¶] Smith told the officers that he had been at the VFW partying with friends, and when he was getting ready to leave, he ran into Thomas, who he originally identified as his nephew. As the interview progressed, it was discovered that there was no blood relation between Smith and Thomas, and that they were friends. Smith said that Thomas was carrying the bag and the 18 pack of beer and he had no idea where he got the beer from. Smith stated he had no reason to rob anyone of beer when he has money and, more importantly, he drinks vodka. Smith said that he was discharged from parole in January. [¶] After interviewing Smith, the officer spoke with Thomas. Thomas said he was partying at the VFW and that he met up with Smith. Thomas said that Smith was already

in possession of the beer and asked him if he wanted to leave the VFW and go to his sister's house in the projects and drink. Thomas said he agreed with that suggestion.”

By information dated August 29, 2011, Smith was charged with second degree robbery (§ 211). The information further alleged that Smith had two prior strike convictions for kidnapping and robbery (§ 1170.12, subd. (c)(2)) and had served two prior prison terms (§ 667.5, subd. (b)).

On October 24, 2011, Smith changed his plea from not guilty to nolo contendere to second degree robbery, conditional on his being sentenced to no more than five years in prison. The prosecution dismissed one prior strike (kidnapping) pursuant to section 207, and Smith admitted the remaining strike, as well as one prison prior.

At sentencing, Smith's *Romero* motion was granted, and the court struck or dismissed all remaining charges, enhancements and special allegations. Smith was sentenced to the lower term of two years in prison. He was awarded custody credits of 131 days, plus 19 days of conduct credits (calculated at 15 percent). Smith was further ordered to pay a restitution fine of \$200 (§ 1202.4, subd. (b)) plus victim restitution in an amount to be determined. The court imposed and suspended an additional restitution fund fine pending Smith's successful completion of parole (§ 1202.45). Smith was also ordered to pay a \$40 court security fee (§ 1465.8), a criminal conviction assessment of \$30 (Gov. Code, § 70373) and a crime prevention fund fine of \$10 (§ 1202.5).

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.