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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

**FILED**

OCT 13 2011

THE PEOPLE,

Plaintiff and Respondent,

v.

THYPOCHUS HUGGINS, et al.,

Defendants and Respondents.

H036254

MICHAEL J. YERLY, Clerk

By \_\_\_\_\_  
DEPUTY

(Santa Clara County  
Super. Ct. No. CC956000)

**FACTUAL AND PROCEDURAL BACKGROUND**

On September 21, 2009, defendants Thyochus Huggins and DeShaun Deprice Staunton burglarized a residence on Penitencia Creek Road in San Jose, and a residence on Dorel Drive in San Jose. Defendants also knocked on the front door of a residence on Sweigert Road, walked into the backyard when the owner of the residence chose not to answer the knock because he did not recognize defendants, and fled after the owner yelled at them. The owner called 911. That same day, investigating officers found property stolen from the Penitencia Creek Road and the Dorel Drive residences in Huggins's vehicle, which was parked in the general area of the burglaries. Also located in Huggins's vehicle was a wallet belonging to Staunton and a wallet belonging to Huggins. Property belonging to another victim was found in Huggins's wallet. Huggins was arrested and booked into county jail. Other stolen property and mail belonging to yet

another victim were found in Huggins's bedroom. Staunton was located on November 18, 2009, in the Santa Rita jail. He subsequently admitted to investigating officers that he committed the burglaries of the residences on Penitencia Creek Road and Doral Drive with Huggins, and that they had trespassed on and attempted to enter the Sweigert Road residence.<sup>1</sup>

Defendants were both charged by information filed February 18, 2010, with two counts of first degree burglary (Pen. Code, §§ 459, 460, subd. (a); counts 1 & 2);<sup>2</sup> and one count of aggravated trespass (§ 602.5, subd. (b); count 6, a misdemeanor). The information further alleged that Staunton had a prior juvenile adjudication that qualified as a strike (§§ 667, subds. (b)-(i), 1170.12) and that he had served two prior prison terms (§ 667.5, subd. (b)). The information separately charged Huggins with three counts of receiving stolen property (§ 496, subd. (a); counts 3-5), and alleged that he had a prior serious felony conviction that also qualified as a strike (§§ 667, subd. (a), (b)-(i); 1170.12), and that he had served two prior prison terms (§ 667.5, subd. (b)). On March 23, 2010, Huggins, while represented by appointed counsel, pleaded nolo contendere or no contest to all the charges and admitted the priors alleged to as to him. Staunton, who was represented by separate appointed counsel, pleaded no contest to the charges and the priors alleged as to him.

On May 20, 2010, Huggins filed a motion requesting that the court strike the prior strike pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. On September 3, 2010, Staunton filed a similar motion. The prosecutor filed separate oppositions to the motions on September 16, 2010.

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<sup>1</sup> The facts are taken from the probation reports.

<sup>2</sup> All further statutory references are to the Penal Code.



The probation officer's report for Huggins states that he had prior felony convictions for first degree burglary and second degree burglary. He also had seven prior misdemeanor convictions for illegal drug activity, prowling, resisting arrest, battery, possessing marijuana, and driver's license fraud. He was on parole when he committed the present offenses. He had served two prior prison terms and had violated parole at least four times before. The probation officer recommended that Huggins be sentenced to prison for 22 years.

The probation officer's report for Staunton states that he had eight prior felony convictions for sexual battery, failing to register as a sex offender, possessing a controlled substance, and possessing a controlled substance for sale. He also had prior misdemeanor convictions for giving a false name to a peace officer, assaulting a peace officer, resisting arrest, and driving without a license. He was on parole when he committed the present offenses. He had served two prior prison terms and had violated parole at least once before. The probation officer recommended that Staunton be sentenced to prison for 16 years eight months.

At a hearing on October 28, 2010, the trial court stated that it had read the motions and attachments filed by the defendants, the separate oppositions, and the separate probation reports. Counsel for Huggins submitted the matter on his papers. Counsel for Staunton argued that his strike prior was an old juvenile adjudication, and that he had good prospects and vocational strengths and goals. He requested that the court strike the strike and consider imposing "a low term." The victim of one of the burglaries argued that he believed that the defendants were "pros," and he requested that the court not strike the strikes and not impose the lower terms. The prosecutor submitted the matter on the papers.

As to Huggins, the court stated that it had "weighed the facts . . . and circumstances of the strike and the background, character, and prospects of him personally and separately." It noted that Huggins, "while in custody, has worked and

done well in tailoring skills; has filed with the Court innumerable certificates and expressed a desire to change his lifestyle.” However, the court declined Huggins’s request to strike the strike. “The Court believes that the facts and circumstances . . . of this particular case were particularly aggravated, but it’s aggravated by the following factors: [¶] That the defendant was on parole for a burglary; that . . . I believe that the strike law was, in fact, designed to punish repeat offenders in this particular area in this particular manner. [¶] There was a lack of intervening periods of time where the defendant did not commit offenses. The Court is of a belief that the defendant does fall within the strike zone on this particular case.” After hearing from Huggins, the court stated that it was sentencing him to prison for 13 years four months. The sentence was to consist of four years (the lower term, doubled) on count 1 (§ 459); consecutive terms of two years eight months (one-third the middle term, doubled) each on counts 2 (§ 459) and 3 (§ 496, subd.(a)); and five years for the prior serious felony conviction (§ 667, subd. (a)).<sup>3</sup> The court stated that it stayed the terms for counts 4 and 5 (§ 496, subd. (a)) pursuant to section 654, it struck the two prison priors (§ 667.5, subd. (b)), and it imposed a 90-day concurrent term on count 6 (§ 602.5, subd. (b)).

As to Staunton, the court noted that he “cooperated very seriously with the law enforcement authorities involved in this particular case. [¶] His strike prior is a 1997 juvenile offense where he robbed an ice-cream vendor of approximately \$117. [¶] In terms of his background, character, and prospects, the defendant was on parole. There were drugs involved and has expressed remorse and requested a chance to go into the Salvation Army.” However, the court denied Staunton’s request to strike the strike. “I do believe that the facts and circumstances of not only this offense but Mr. Staunton’s background would place him outside of the strike zone. [¶] I would indicate there have

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<sup>3</sup> As the court later noted, the sentence as described is actually 14 years four months, not 13 years four months.



been two new felonies since the strike offense. There was a sex offense after the strike and then a failure to register for that. The Court also finds that there was plenty of opportunities to avail himself of substance abuse treatment programs and he failed to take those up. [¶] The Court finds that the factors simply do not tip towards the balance of striking these strikes, and for those reasons, the motion is denied.” After hearing from Staunton, the court sentenced him to prison for six years eight months. The sentence consists of four years (the lower term, doubled) on count 1 (§ 459), and two years eight months (one-third the midterm, doubled) on count 2 (§ 459). The court struck the two prison priors (§ 667.5, subd. (b)), and imposed a 90-day concurrent term on count 6 (§ 602.5, subd. (b)). Staunton filed a timely notice of appeal and did not request a certificate of probable cause.

On November 4, 2010, the court stayed the transport of Huggins to prison pending a modification of his prison sentence. (§ 1170, subd. (d).) On December 2, 2010, the court noted that the sentence it had imposed on Huggins amounted to 14 years four months rather than 13 years four months. The court then sentenced Huggins to 13 years in prison. The sentence consists of four years (the lower term, doubled) on count 1 (§ 459); a consecutive term of two years eight months (one-third the midterm, doubled) on count 2 (§ 459); a consecutive term of one year four months (one-third the midterm) on count 3 (§ 496, subd. (a)); plus five years for the prior serious felony (§ 667, subd. (a)). The court stayed the terms on counts 4 and 5 (§ 496, subd. (a)), struck the two prison priors (§ 667.5, subd. (b)), and imposed a concurrent 90-day jail term for count 6 (§ 602.5, subd. (b)).

#### **HUGGINS’S APPEAL**

Huggins filed a timely notice of appeal and did not request a certificate of probable cause. We appointed counsel to represent him in this court. Appointed counsel has filed a brief which states the case and facts but which raises no issues. We notified Huggins of his right to submitted written argument in his own behalf within 30 days. We

received no written response from Huggins within that time period. After the period elapsed, we received a letter from Huggins requesting that we “discard[]” appointed counsel’s brief and that “ ‘new’ counsel be instated [*sic*] to represent [his] interests in a more apt and intelligent manner.” The letter does not otherwise challenge his sentence. We have reviewed the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelley* (2006) 40 Cal.4th 106, and have concluded that there is no arguable issue on appeal. Huggins cannot challenge the validity of his plea without a certificate of probable cause. (See § 1237.5; Cal. Rules of Court, rule 8.304(b).) Accordingly, we decline Huggins’s request that appointed counsel’s brief be stricken and that new appellate counsel be appointed for him.

#### STAUNTON’S APPEAL

Staunton’s sole contention on appeal is that the strike allegation “was improperly alleged and imposed violating his Sixth and Fourteenth Amendment rights because he had sustained the true finding in a juvenile matter without the benefit of a jury.” He acknowledges that “the California Supreme Court held in *People v. Nguyen* (2009) 46 Cal.4th 1007 on July 2, 2009, that juvenile adjudications without benefit of jury trial may be relied on constitutionally to enhance a sentence beyond the statutory maximum.” He also acknowledges that “this court is bound to follow the *Nguyen*” decision. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) He states that “he raises the issue to preserve it for federal review, adding only that Justice Kennard’s dissent in *Nguyen*, by far, offers the more cogent and logical analysis.” We decline defendant’s request to further address the issue.

#### DISPOSITION

The judgments are affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.

*People v. Huggins, et al.*  
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