Filed 3/8/11 P. v. Amie CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL AMIE, Defendant and Appellant.	F059544 (Super. Ct. No. MF008835A) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Cory J. Woodward, Judge.

Michael Allen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

* Before Gomes, Acting P.J., Poochigian, J. and Franson, J.

On Samuel Amie's appeal from his judgment of conviction of first degree burglary, the sole issue is whether the court's denial of probation and imposition of a state prison sentence was an abuse of discretion. We affirm the judgment.

FACTUAL BACKGROUND

On July 13, 2009, and again on July 14, 2009, a California City resident returned home to discover her home burglarized. Investigators noticed fresh tire tracks left by a vehicle with mismatched tires and lifted three latent fingerprints and collected a blood sample from a broken window. A pickup truck outside Amie's home had mismatched tires with tread patterns similar to those in the tire tracks outside the crime scene. One of the latent fingerprints from the crime scene was the same as his right thumbprint.

A comparison of deoxyribonucleic acid (DNA) tests of broken glass at the crime scene and a bucal swab from Amie showed he was "included as being the contributor of this DNA profile." The probability of encountering an "unknown unrelated individual" with this DNA profile was one in 1.2 septillion in the Caucasian population, one in 4.4 septillion in the Hispanic population, and one in 38 quintillion in the African-American population.

PROCEDURAL BACKGROUND

On September 14, 2009, an information charged Amie with burglary of an inhabited dwelling house. (Pen. Code, §§ 459, 460, subd. (a).)[1] On November 5, 2009, a jury found him guilty as charged. On December 8, 2009, the court denied probation and imposed the four-year midterm in state prison.

DISCUSSION

Amie argues that the court committed an abuse of discretion by denying probation and sentencing him to state prison. The Attorney General argues the contrary.

---

[1] Later statutory references are to the Penal Code.

Preliminarily, we set out the applicable law. By statute, the court had limited discretion to grant Amie probation: "Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a burglary of an inhabited dwelling house …." (§ 462, subd. (a).) The statute, in turn, invokes a rule of court on probation eligibility in unusual cases:

> "If the defendant comes under a statutory provision prohibiting probation 'except in unusual cases where the interests of justice would best be served,' … the court should apply the criteria in (c) to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation." (Cal. Rules of Court, rule 4.413(b).)

Of the five criteria in rule 4.413(c) to which rule 4.413(b) refers, the parties both focus on one: "The defendant is youthful or aged, and has no significant record of prior criminal offenses." (Cal. Rules of Court, rule 4.413(c)(2)(C).) Congruently, the court at the probation and sentencing hearing identified that one criterion as determinative on the issue of "whether this is an unusual case."

Acknowledging "that is a factor to be considered," the court did "not find that it overrides the fact that this was a substantially more serious first degree burglary … not only in the amount of money and items that were taken in the first degree burglary, but also the planning that was involved throughout the course of this crime." The court set out other reasons why the sole criterion at issue did not overcome the statutory limitation on probation. The "dollar loss was significant," the court observed, and "Amie was an active participant in the crime," which involved "sophistication and planning." The court emphasized that the crime did not occur on the "spur of the moment" but, to the contrary, occurred through his violation of a "position of trust that was taken advantage of" when he gained access to the home "via a garage sale" and then broke into the home later. The

court characterized him as "intentionally deceitful" and found that his testimony showed "absolutely no remorse." Since a comparison of the physical evidence and his testimony showed he "lied at the trial," the court found that he "poses a significant danger to other people whose homes may be burglarized."

As the probation report documented, Amie, who was 52 years old at the time of the commission of the charged first degree burglary, showed satisfactory performance on misdemeanor probation for his 1975 theft prior from Los Angeles County. (§ 484.) The probation officer recommended felony probation on that basis. The district attorney, on the other hand, noted he broke into the house twice, characterized the crime as "a serious offense," and recommended the mitigated term in state prison.

Arguing that the court's denial of probation "against the recommendation of probation" was an abuse of discretion, Amie relies primarily on the criteria in rule 4.414, but that puts the cart before the horse. Only if the court finds, applying the criterion in rule 4.413(c)(2)(C), that "the statutory limitation on probation *is* overcome" are the criteria in rule 4.414 *then* relevant. (Cal. Rules of Court, rule 4.413(b), italics added.) "'[I]f the statutory limitations on probation are to have any substantial scope and effect, "unusual cases" and "interests of justice" must be narrowly construed.'" (*People v. Stuart* (2007) 156 Cal.App.4th 165, 178 (*Stuart*), quoting *People v. Superior Court* (*Dorsey*) (1996) 50 Cal.App.4th 1216, 1229.) Here, since the court found that the statutory limitation on probation was *not* overcome, the issue of how to apply the criteria in rule 4.414 "affecting the decision to grant or deny probation" in the *usual* case never arose. (Cal. Rules of Court, rule 4.414.)

"'The standard for reviewing a trial court's finding that a case may or may not be unusual is abuse of discretion.'" (*Stuart, supra,* 156 Cal.App.4th at p. 178, quoting *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.) An appellate court has no authority to substitute its judgment for that of the trial court, so a trial court's decision will not be reversed merely because reasonable people might disagree. (*Stuart, supra,* at

p. 179, citing *People v. Carmony* (2004) 33 Cal.4th 367, 377.) By the governing standard of review, Amie fails to persuade us that the court's denial of probation and imposition of a state prison sentence was an abuse of discretion.

DISPOSITION

The judgment is affirmed.