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FILED

FEB 6, 1989

County Clerk

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 PEOPLE OF THE STATE OF CALIFORNIA,)

13 Plaintiff,)

14 v)

15 JOHN WESLEY EWELL,)

16 Defendant.)

CASE NO. A649381

SENTENCING MEMORANDUM

P & S

HEARING February 10, 1989

DEPARTMENT D

17 I.

18 FACTUAL SUMMARY

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20
21 In the early morning hours of August 17, 1988, Defendant
22 John Wesley Ewell (the "defendant") first met Hector Gonzales (the
23 "victim") as the victim was seated in the passenger seat of the
24 victim's 1985 Nissan pick-up truck (the "truck"). Prior to this
25 meeting, the victim had consumed substantial amounts of beer and was
26 in a weakened state. The defendant, casually smoking a cocaine pipe,
27 conversed with the driver of the truck, Nikki Talbert ("Talbert"), who
28 also was smoking a cocaine pipe, and then handed Talbert a rock of

1 cocaine. Thereafter, Talbert whispered something to the defendant
2 outside the victim's hearing; the defendant replied "I'll see you
3 later."

4 The defendant then apparently followed the victim for
5 approximately half-an-hour by car through city streets, until coming
6 upon the victim in a secluded alley where the truck driven by Talbert
7 had stopped. The defendant immediately pulled Talbert from the
8 driver's seat of the truck and commandeered the truck, driving it with
9 the victim in it to a nearby garage.

10 At all times, the defendant was accompanied by Robert
11 Goodrich ("Goodrich") who is approximately 6'1", 195 pounds, with a
12 muscular, powerful physique; the victim is approximately 5'8", 165
13 pounds. With the defendant sitting on one side of the victim and
14 Goodrich on the other, the defendant told the victim, "Don't move if
15 you don't want to be hurt."

16 After ordering the victim to get out of his truck, the
17 defendant tied the victim's hands, took the victim's wallet, house
18 keys and watch, and then drove off in the victim's truck.
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20 II.

21 PROCEDURAL HISTORY

22 On January 19, 1989, a jury convicted the defendant of
23 second degree robbery, a violation of Penal Code Section 211. On
24 January 20, 1989, the Court found that the defendant had previously
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1 been convicted of a serious felony, robbery, in case number A091291,
2 and the alleged enhancement under Penal Code Section 667 was true.
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5 III.

6 DEFENDANT'S CRIMINAL HISTORY

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8 In addition to his felony robbery conviction (211 P.C.) in
9 1985 for which he did 270 days in county jail, defendant has mis-
10 demeanor convictions for forgery (470 P.C.) in 1984 and theft (484
11 P.C.) in 1987. While on two year's probation for the 1987 theft, the
12 defendant committed the crime in this case. On December 12, 1988,
13 while on bail in this case, the defendant was arrested and charged in
14 a new case, A650954 (Compton Mun. Ct.), with the crime of second
15 degree burglary (459 P.C.); that case is pending at this time.
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17 IV.

18 SENTENCING CONSIDERATIONS

19 A. CIRCUMSTANCES IN AGGRAVATION

20 UNDER CALIFORNIA RULE OF COURT 421:

- 21
22 (a)(1) The crime involved a threat of great bodily harm by the
23 defendant when he told the victim, who was surrounded by
24 the defendant and the formidable Goodrich, not to move if
25 he did not want to be hurt.
26

27 *Vict Contradicted facts*
28

667a
5yrs
provided for
good to trial

2 (a)(3) The victim, relatively small in size and weakened by
3 alcohol, was particularly vulnerable.

4 (a)(5) The defendant occupied an active and dominant position in
5 the actual taking of the victim's property by personally
6 removing the victim's property and tying his hands.

7 (a)(8) The defendant's planning, including his statement to
8 Talbert that he would see her later and his following the
9 victim for approximately half-an-hour, indicate
10 premeditation of the crime.

11 (b)(2) The defendant's prior convictions are of an increasing
12 seriousness and frequency.

13 (b)(4) The defendant was on probation for theft when he
14 committed this crime.

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20 B. CIRCUMSTANCES IN MITIGATION

21 UNDER CALIFORNIA RULE OF COURT 421:

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23 None.