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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DARONTA TYRONE LEWIS,

Defendant and Appellant.

A131306

(Solano County
Super. Ct. No. FCR275789)

The Solano County District Attorney filed an information charging appellant Daronta Tyrone Lewis with second degree commercial burglary (Pen. Code, § 459 – count 1), forgery of a false check (*id.*, § 470 subd. (d) – count 2), and forgery of a completed check with the intent to defraud (*id.*, § 475 subd. (c) – count 3). The information also alleged appellant had five prior convictions within the meaning of Penal Code section 667.5, subdivision (b). Appellant entered a plea of no contest and admitted the prior convictions allegations. The court imposed and suspended a five-year prison term, and placed appellant on probation on the condition that he complete a drug rehabilitation program.

Appellant enrolled in a Salvation Army program, but was medically discharged before completion. The Archway Recovery program accepted him, but later revoked acceptance due to his displays of rage over funding issues. He was also unable to obtain placement in any alternative programs. As a result, the court allowed appellant to revoke

his previous plea and enter a new plea of no contest to count 1. He also admitted two prior convictions. The court sentenced appellant to prison for three years four months. Neither the trial court nor defense counsel mentioned the possibility of commitment to California Rehabilitation Center (CRC).

On appeal, appellant claims the trial court erred by neglecting to consider a CRC commitment, and asks this court to overrule *People v. Planavsky* (1995) 40 Cal.App.4th 1300 (*Planavsky*). Following *Planavsky*, we conclude that because appellant failed to request the CRC commitment below, he forfeited his claim. Accordingly, we affirm the judgment.¹

I. FACTS²

Appellant brought a \$200 personal check to Chase Bank. He presented the teller with the check, his California identification, and Social Security card. The teller suspected the check was altered and showed it to her manager. The manager contacted the owner of the account, who reported she did not know appellant. She had placed a \$20 check in her mailbox made out to a different party. Before the mail carrier arrived she noticed the check was missing, and instead found appellant's handwritten flyers advertising landscaping services. Appellant left the bank in a blue vehicle with two other people before the teller and manager returned. The bank contacted the Fairfield Police Department. Officer Garcia arrived at the bank while other officers stopped the blue vehicle and detained its occupants.

In statements to his probation officer, appellant explained that he was on methamphetamine at the time and unaware the check was not for him. He thought it had been sent to him as a donation. He wanted to use the \$200 to "feed his drug addiction." His parole agent confirmed he tested positive for methamphetamine.

¹ In addition to this appeal, appellant has filed a related petition for writ of habeas corpus, which we determine by separate order. (*In re Lewis*, A134596.)

² We derive the statement of facts from the probation department's preplea report because no trial was held in this case.

II. DISCUSSION

A. *Background*

The trial court ordered a preplea report and screening of appellant to determine whether he should be placed in a drug rehabilitation program. The following information concerning appellant's background and criminal past is drawn from the preplea report, and subsequent addenda and memoranda the probation department submitted to the court.

Appellant's stepfather began getting appellant high by blowing crack cocaine in his face when appellant was five years old. When he was 11, appellant witnessed his stepfather murder his mother. Since then, appellant has had a history of drug use including alcohol, marijuana, cocaine, heroin, and crystal methamphetamine. Appellant's first arrest was at age 15 for attempted robbery. "He has been consistently involved in criminal activity since then, and has six prior felony convictions. . . . [¶] . . . The defendant's criminal history as an adult, is primarily comprised of drug and theft related offenses." As the preplea report describes appellant, "[h]e appears to be fairly entrenched in criminal behavior, and acknowledges that he has been unable to maintain positive relationships with others while out in the community."

Yet, the probation department explained in its preplea report, "[i]t is felt that the defendant is motivated to change his lifestyle, and has made some efforts in that direction during his last period of time on parole." He was driven to get clean in order to establish a relationship with his autistic six-year-old son. According to his siblings, he applied for or obtained credentials in forklifting and oil refinery; studied to be an electrician; and was working on his landscaping business at the time of his arrest.

Appellant enrolled in a few drug programs, but failed to complete any of them or successfully overcome his addiction for more than a few months. For example, Archway Recovery accepted appellant pending a determination by his parole agent of funding eligibility, but it later withdrew acceptance because he exhibited a "state of rage" they were unprepared to handle. In a supplemental report to the court, the probation department attached a letter from Archway Recovery explaining the revocation. The director initially thought appellant to be a "polite young man." However, after receiving

letters from him regarding issues with funding and his parole agent, the director found his attitude “rude, tasteless and disrespectful.”

The supplemental report further explained that while in custody appellant demonstrated “a lack of respect for others.” He was a disruption, and received over 25 write-ups. The report characterized appellant as a “marginal candidate for continued probation services.” Appellant required “more intensive supervision and counseling,” and it was “unknown if any program [had] the resources and time to give directly to the defendant, without taking the time away from other program residents.”

B. *Appellant Forfeited His Claim*

Appellant claims the court erred in failing to initiate proceedings under Welfare and Institutions Code section 3051 (section 3051) to determine his eligibility for CRC commitment. He argues that the waiver rule established by *Planavsky, supra*, 40 Cal.App.4th 1300 was wrongly decided, and the language of the statute instead requires judges to initiate and follow a two-step process: (1) determine whether the defendant is addicted; and (2) if there is a finding of addiction or the possibility of addiction the court “must” suspend execution of the sentence, and order the initiation of CRC proceedings. Appellant contends he made a representation of addiction, triggering the court’s duty to suspend sentencing and consider CRC commitment. (*People v. Granado* (1994) 22 Cal.App.4th 194, 200.)

Section 3051 reads in relevant part: “[I]f it appears to the judge that the defendant may be addicted . . . the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant . . . for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant’s record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.”

The initial legislative intent in enacting section 3051 was to encourage rehabilitating addicts. “That policy favors inquiry into the addictive status of all criminal defendants whose records indicate the presence of an addiction problem.” (*People v. Pineda* (1965) 238 Cal.App.2d 466, 472, italics omitted.) “It is to society’s benefit to see

that the fullest consideration is given to the rehabilitative facilities for narcotic addiction.” (*Id.* at p. 473.) “The only valid statutory ground for the judge’s decision not to initiate commitment proceedings, then, is the defendant’s ‘pattern of criminality’ as evidenced by his ‘record and probation report’ ” because they may impede, impair or detract from the rehabilitative services for other patients. (*People v. Flower* (1976) 62 Cal.App.3d 904, 911, italics & fn. omitted.)

The case law preceding *Planavsky* failed to create a clear and uniform rule regarding when and who may request CRC consideration. In *People v. Flower, supra*, 62 Cal.App.3d 904, the trial court record was silent regarding civil commitment. The reviewing court presumed the trial court functioned properly and considered CRC because the record was silent. (*Id.* at p. 910.) *People v. Sanford* (1988) 204 Cal.App.3d 1181 (*Sanford*) later limited *Flower*, holding that if the trial court made a formal finding of addiction on the record, the court was required to initiate rehabilitation proceedings. In the event it failed to do so, the defendant could bring a claim for civil commitment proceedings for the first time on appeal. (*Id.* at pp. 1183-1184; see *People v. Young* (1991) 228 Cal.App.3d 171, 182.)

The court in *Planavsky* sought to create a more “ ‘practical and straightforward’ ” application of section 3051. It found that cases like *Sanford* “were based on an overexpansive reading of applicable precedent.” (*Planavsky, supra*, 40 Cal.App.4th at p. 1302, fn. omitted.) The court also declared the presumption that judges considered civil commitment where the record was silent a “legal fiction.” (*Ibid.*) Instead, *Planavsky* adopted the waiver rule announced in *People v. Scott* (1994) 9 Cal.4th 331. The *Scott* court held that a defendant forfeits any claim to discretionary sentencing decisions unless objected to below. (*Id.* at pp. 336-337.) This rule was created “to encourage prompt detection and correction of error, and to reduce the number of unnecessary appellate claims” (*Id.* at p. 351.) Following *Scott*, the court in *Planavsky* ruled that the defendant must present a claim for civil commitment in the lower court or forfeit the section 3051 claim. (*Planavsky, supra*, 40 Cal.App.4th at p. 1311.)

The *Planavsky* court further explained that although the legislative intent was to encourage rehabilitation of addicts, it did not excuse the defendants from bringing requests for civil commitment at the trial court level. (*Planavsky, supra*, 40 Cal.App.4th at p. 1314.) “Defects in sentences should be brought to the trial judge’s attention in time to correct them, not remedied during a lengthy appellate process.” (*Id.* at p. 1302.) “It is wasteful—and, frankly, an incentive for gamesmanship—to allow easily correctable sentencing errors to be raised for the first time on appeal where an appellate court has ‘no choice’ but to remand when there is prejudicial error.” (*Id.* at p. 1311.) The court also explained that in order for a CRC commitment to be effective the defendant must want help enough to ask for it. “Drug treatment is completely ineffectual without the addict’s actual desire to end the addiction.” (*Id.* at p. 1312.)

In *People v. Lizarraga* (2003) 110 Cal.App.4th 689, 691 (*Lizarraga*), the defendant likewise argued that *Planavsky* was wrongly decided. The defendant had a history of criminality including convictions for drug offenses, but his attorney claimed he was not on drugs at the time of trial. The court followed *Planavsky*, holding that Lizarraga waived his claim by failing to bring it in the trial court. (*Id.* at p. 692.) The court “reject[ed] defendant’s attempt to circumvent the waiver doctrine.” (*Ibid.*)

We agree with and therefore follow the reasoning and logic of *Planavsky* and *Lizarraga*. If a defendant fails to bring a claim under section 3051, he or she waives that claim on appeal.

C. *No Miscarriage of Justice*

Appellant argues that the trial court made a prejudicial error because it did not stop the sentencing procedure to make a finding of addiction, and it did not state any reasons for denying a CRC commitment. Notwithstanding our forfeiture ruling, we further conclude that any error was not prejudicial.

“[A] ‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

“[O]rdinarily where the result appears just, and it further appears that such result would have been reached if the error had not been committed, a reversal will not be ordered.” (*Id.* at p. 835.)

In the event a court finds a defendant to be an addict, it must provide reasons for denying CRC commitment supported by facts in the record. (*People v. Granado, supra*, 22 Cal.App.4th at p. 203.) Additionally, the only reason for a CRC denial is a pattern of criminality under section 3051.

In the case at hand, the probation department’s preplea report described appellant as being “consistently involved in criminal activity” since age 15. His juvenile probation “terminated unsuccessfully,” his adult record began while he was on juvenile probation, and he violated parole in the past. In addition, at the time of the incident at Chase Bank appellant was on parole. The court, after learning of appellant’s history, explained its sentencing decision: “I did review the file and various entries, not only by the lawyers, but myself and the Probation Department, based on the new information from the Probation Department, I don’t think the interest of justice would be served by giving him back the program that previously was promised him.” Accordingly, the court denied probation.

It is highly unlikely that the trial court would have considered appellant suitable for CRC commitment on account of his “pattern of criminality.” Assuming for purposes of argument only that the court erred in failing to consider CRC placement, any error would not have amounted to the requisite “miscarriage of justice” because the result would have been no different.

III. DISPOSITION

The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Rivera, J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.