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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW LEON, Defendant and Appellant.	A133655 (Sonoma County Super. Ct. No. SCR594672)

Counsel appointed for Matthew Leon has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, to determine if there are any arguable issues that require briefing. Counsel advises that defendant was apprised of his right to file a supplemental brief, but has not elected to exercise that right.

We have concluded our review, conclude there are no arguable issues, and affirm.

The record shows that on December 16, 2010, the District Attorney of Sonoma County filed a felony complaint charging defendant with possession of marijuana for sale (Health & Saf. Code § 11359) and transporting marijuana (Health & Saf. Code § 11360, subd. (a)). On January 19, 2011, defendant filed a motion for declaration of venue and transfer of the case to Mendocino County. The People filed opposition and defendant a reply. On July 8, 2011, defendant filed a request that the court take judicial notice of what was asserted to be a "factually similar" prior Sonoma County case in which venue had been transferred to Mendocino County.

Both defendant's motion and defendant's request came on for hearing on September 9, 2011, before the Honorable Virginia Marcoida, who first heard argument regarding the request that the court take judicial notice of a previous Sonoma County case in which a different judge had granted a change of venue motion and ordered the matter transferred to Mendocino County; Judge Marcoida stated that she would take judicial notice of the facts on the minute orders from the prior case, and that there had been a transfer order signed by the judge in that case.

The hearing then turned to the motion to transfer venue, as to which defense counsel argued that it was unfair to force defendant to "fight" cases in both Sonoma and Mendocino counties, claiming that they were based on charges arising out of the same set of operative facts and course of conduct. The district attorney argued that the charges in each county involved separate and distinct crimes, with the traffic stop in Sonoma leading to the execution of a search warrant and separate charges being filed in Mendocino.

Judge Marcoida stated that she viewed the defense motion as one of consolidation under the mandatory joinder principles of Penal Code section 654 and *Kellett v. Superior Court* (1966) 63 Cal.2d 822, and went on to find that the offenses were separate acts not part of an indivisible course of conduct. The fact that defendant "may have had a broad general objective to sell marijuana does not mean that his intent and objective with respect to the marijuana found in his vehicle was identical to his intent and objective with respect to the marijuana found in his residence." Judge Marcoida expressly found that the joinder of the two cases would not serve the legislative goals of section 654 and 954, and noted the different factual predicates for the charges filed in each county. Following all that, Judge Marcoida then denied the motion to transfer.

On September 19 a joint plea and sentencing hearing was held for defendant along with his codefendants. Judge Marcoida canvassed each defendant as to their completion of written waiver of rights forms, as well as to the waiver of their rights to a preliminary hearing, court or jury trial, confrontation, silence, and compulsory process, and found knowing, voluntary, and intelligent waivers on the part of each defendant. Defendant then entered a no contest plea to an added count III, possession of concentrated cannabis,

under Health and Safety Code section 11357; the remaining counts were dismissed. Defendant waived the preparation of a presentence report, and asked to be sentenced immediately. Pursuant to agreement, imposition of sentence was suspended, and defendant was placed on three years' probation.

Defendant filed a timely notice of appeal.

At all relevant times, defendant was represented by counsel who defended his interests with admirable zeal and ability.

Defendant's change of plea complied with *Boykin v. Alabama* (1969) 395 U.S. 238, and *In re Tahl* (1969) 1 Cal.3d 122, and defendant was advised of the consequences of the change of pleas as required by *In re Yurko* (1974) 10 Cal.3d 857.

The trial court did not abuse its discretion in declining to transfer the case to Mendocino County.

The judgment of conviction in affirmed.

_____
Richman, J.

We concur:

_____
Kline, P.J.

_____
Lambden, J.