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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.

EDWARD L. MARTINEZ,

Defendant and Appellant.

A134055

(Sonoma County
Super. Ct. No. SCR-606447)

Defendant Edward L. Martinez appeals from a three-year, suspended prison sentence he received, which included, subject to local custody credits, a 12-month term in the county jail, following his plea of no contest to robbery (Pen. Code,¹ § 211). Defendant's counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief raising any issues he chooses to bring to this court's attention, but has not done so. Having conducted the requested review, we conclude there are no errors or arguable issues for review, and thus, affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts are derived from the probation report. On August 8, 2011, at approximately 10:30 p.m., Sonoma County Sheriff's deputies responded to a report of an assault at the Santa Rosa Mobile Park. When the deputies arrived at the scene, they

¹ All further undesignated statutory references are to the Penal Code.

found the victim inside his residence, with a bleeding head wound. The victim told the deputies that he had been sitting in his reclining chair that afternoon and fell asleep at approximately 3:00 p.m. The victim said that, at the time he fell asleep, he was alone in his residence and his front door was unlocked. When the victim awoke at 7:00 p.m., he stood up and noticed that he was bleeding from his head. He claimed he did not know how he became injured or who was responsible. While speaking to the deputies, the victim noticed that his wallet was missing from the living room. He also discovered that he was missing approximately \$7,000 in cash that had been in his front pants pocket when he fell asleep.

Evidence of drug and alcohol use was found in the trailer. The victim was transported to the hospital for treatment of his head injury.

The victim's neighbor told police that the victim frequently had people staying at his trailer and that the victim "was known to carry a few thousand dollars on his person at all times." The neighbor said that the prior evening he "ran [off]" defendant and defendant's brother from the victim's residence. The neighbor indicated that defendant and his brother frequented the victim's residence, and they often used drugs with the victim there.

A second neighbor said that at approximately 3:00 p.m. on the day of the incident, he saw defendant's brother driving the victim's vehicle.

The deputies located defendant in a field behind the trailer park, living in a small homeless camp. His camp was searched, but no evidence tying him to the robbery was found. Evidence of drug and alcohol use was found next to a makeshift bed area. Defendant was arrested for two probation violations and taken to the county jail.

On August 10, 2011, detectives contacted the victim at the hospital and conducted a second interview. The victim disclosed that on the day of the incident, he had told defendant and his brother that they could no longer come to his residence, or the victim "would be kicked out of the trailer park by management." The victim said that defendant "became very angry, withdrew a short-barreled shotgun from his person, and pointed it at

[the victim's] head while yelling at him." The victim, however, maintained that he did not know who robbed him or who hit him on the head.

That same day, at approximately 4:00 p.m., detectives located and detained defendant's brother, who had in his possession a motel room key. When detectives went to the motel, they found defendant, who had been released from jail the prior day. Defendant was advised of his *Miranda*² rights and ultimately agreed to talk to the detectives, stating that he was a " 'witness.' " Initially, defendant denied being in or near the victim's residence at the time in question. He further denied having any knowledge about a shotgun. When a detective told defendant that he knew defendant had a shotgun and had been inside the victim's residence on the day of the incident, defendant paused, then stated, " 'Wait a second, you're right, I was there.' " Defendant, however, denied any involvement in the robbery. When advised that he was being placed under arrest, defendant said, " 'You're not going to take me alive.' " He vehemently resisted arrest, but was eventually restrained by several detectives.

On October 14, 2011, defendant was charged by first amended information with one count of robbery (§ 211) and one count of assault with a deadly weapon (§ 245, subd. (a)(1)). The first amended information also alleged that defendant had suffered a prior serious felony conviction for robbery in 1989 (§§ 211, 667.5, subd. (a), 1170.12), as well as a prior conviction in 1997 for smuggling a firearm or deadly weapon into prison or jail (§ 4574, subd. (a)). That same day, defendant entered a plea agreement and pleaded no contest to the robbery count. The prosecutor dismissed the remaining count against defendant and the enhancement allegations against him. Pursuant to the stipulated agreement, defendant was to receive a three-year suspended sentence and be granted formal probation, with a term in the county jail to be determined by the court at sentencing. At this time, defendant also admitted to violating his probation in two other cases; the trial court then revoked defendant's probation in those cases.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

On November 15, 2011, defendant was sentenced to a three-year suspended sentence and placed on formal probation for 36 months, subject to various conditions. He was ordered to spend 12 months in the county jail and to pay various fees and fines, including a restitution fine of \$220, which included a 10 percent administrative fee. A parole revocation fine of \$200 was imposed and suspended. By stipulation, defendant was ordered to pay \$7,000 in victim restitution.

With respect to defendant's two prior probation violations, defendant was sentenced to one year in custody for the first violation, to run consecutively to the term previously imposed, subject to local custody credits. As to the second probation violation, defendant was sentenced to six months in custody, to run consecutively to the prior two terms previously imposed, subject to local custody credits. At this point in the hearing, defendant commented, "So, that's two and a half years?" and inquired if he could get a work release or another jail alternative. The trial court denied the request for work release and all jail alternatives, noting that it had never contemplated such options in agreeing to the sentence imposed.

At the conclusion of the hearing, the trial court asked defendant if he accepted the terms and conditions of his probation. Defendant replied, "I kind of want to withdraw my plea, your Honor." The court then concluded the hearing, stating, "Well, I can certainly understand, and so we've concluded this matter. I wish you the best of luck."

II. DISCUSSION

Defendant filed a notice of appeal, alleging sentencing error and purporting to raise "[a]ny and all legal grounds." The record, however, does not contain a certificate of probable cause. Absent a certificate of probable cause, a defendant cannot challenge the validity of a no contest plea on appeal. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Cuevas* (2008) 44 Cal.4th 374, 377.) Thus, to the extent defendant seeks to challenge his no contest plea, such claim is not subject to our review due to the failure to comply with rule 8.304(b) of the California Rules of Court and section 1237.5. Nonetheless, we have reviewed the entire record in this case in our discretion and in the

interest of justice, and find no meritorious issues to be argued, or that require further briefing on appeal regarding the validity of the plea or the sentence imposed.

Specifically, no error appears in the entry of defendant's plea, in the implied denial of defendant's equivocal request to withdraw his plea once sentence was pronounced, or in the sentencing proceedings. Defendant was advised of his constitutional rights prior to the entry of his plea, as well as the consequences of his plea, including that he would be required to serve time in the county jail, with the term being determined by the court. The court found the plea to be free and voluntary, that defendant had made a knowing and intelligent waiver of his constitutional rights, and that there was a factual basis for the plea. Defendant was adequately represented by legal counsel throughout the proceedings. "When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court's decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]" (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496; see also *People v. Holmes* (2004) 32 Cal.4th 432, 442-443; *People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.) Here, the trial court did not abuse its discretion in denying defendant's motion to withdraw his plea.

Further, the sentencing choices made by the trial court were consistent with applicable law, supported by substantial evidence, and were well within the discretion of the trial court. The restitution fines and penalties imposed were supported by the law and facts.

III. DISPOSITION

The judgment is affirmed.

Sepulveda, J.*

We concur:

Ruvolo, P. J.

Rivera, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.