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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN G. HUMPHRIES,

Defendant and Appellant.

A134704

(Lake County
Super. Ct. No. CR928253)

On December 13, 2011, appellant Steven G. Humphries was convicted, following his plea of no contest, of two felonies: attempting by threats or violence to deter an executive officer from performing a lawful duty (Pen. Code, § 69),¹ and possession of methamphetamine for sale (Health & Saf. Code, § 11378). He admitted that he had suffered two prior terms of imprisonment arising from felony convictions (§ 667.5, subd. (b)), making him presumptively ineligible for probation under section 1203, subdivision (e)(4). As part of the plea agreement, the prosecution moved to dismiss a charge of transportation, selling or furnishing methamphetamine (Health & Saf. Code, § 11379, subd. (a)), and an allegation that Humphries had suffered a prior “strike” conviction for burglary (§ 667, subds. (b)–(i)). Humphries was advised that the maximum possible sentence he could receive was five years, eight months. The court denied probation, finding that this was not an unusual case that would overcome Humphries’s presumptive ineligibility. The court found that, even if Humphries had been

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

eligible for probation, he would not be a suitable candidate for probation given his numerous prior convictions and his poor prior performance on probation and parole. The court sentenced Humphries to prison for the maximum term of five years, eight months: imposing the three-year upper term for possession of methamphetamine for sale; an eight-month consecutive term for resisting an executive officer; and one consecutive year for each the two prior prison terms Humphries had served. Humphries was awarded 140 days of presentence credits. Among other fines and fees, the court ordered a \$1,200 restitution fine and a \$1,200 parole revocation restitution fine.

A timely notice of appeal was filed on February 16, 2012. The notice of appeal recites that it is based on “the sentence or other matters occurring after the plea that do not affect the validity of the plea.” (Cal. Rules of Court, rule 8.304(b).) No certificate of probable cause (§ 1237.5), permitting pursuit of other issues, was requested.

Assigned counsel has submitted a *Wende*² brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that appellant has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court’s attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

BACKGROUND

Since Humphries appeals only his sentence, we recite the underlying facts only as they are relevant to the court’s sentencing choices. The facts of the offenses, and background information relevant to the sentencing, are set forth in the probation officer’s report and recommendation.

On November 29, 2011, Humphries, a known parolee, was stopped by a Lake County Sheriff’s deputy. Humphries seemed nervous and started to remove his backpack. When the deputy grabbed Humphries by the arm, he swung at the deputy,

² *People v. Wende* (1979) 25 Cal.3d 436.

nearly hitting him in the face. After a struggle, Humphries was ultimately restrained with the assistance of two other officers and a bystander. Inside Humphries's backpack, the deputy found 11 baggies containing a total of 21.5 grams of methamphetamine. They also found 15.2 grams of marijuana, a clear glass smoking pipe with white residue in the bowl, and a digital scale.

In sentencing Humphries, the court, as previously noted, found that this was not an unusual case such that would overcome the statutory presumption against grant of probation. In selecting the upper term on the charge of possession of methamphetamine for sale, the court found that aggravating factors outweighed mitigating circumstances. The court cited the following aggravating factors: 1) the manner in which the crime was carried out indicated planning and sophistication; 2) Humphries engaged in violent conduct indicating a serious danger to society; 3) his prior convictions are numerous; 4) he was on parole at the time the crime was committed; and 5) his prior performance on probation and parole was unsatisfactory. In mitigation, the court found that Humphries voluntarily acknowledged wrongdoing early in the proceedings. A consecutive term was imposed on the section 69 conviction because the crimes and their objectives were "predominantly dependent [*sic*] on one another,"³ and they were committed "at different times and or separate places."

DISCUSSION

Humphries's notice of appeal challenges only his sentence. Humphries was told at the time of his plea that he faced a prison sentence of up to five years and eight months. Section 1170, subdivision (b) provides that (1) the middle term is no longer the presumptive term absent aggravating or mitigating facts found by the trial judge; and (2) a trial judge has the discretion to impose an upper, middle, or lower term based on reasons he or she states. The section provides in pertinent part: "When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice

³ As Humphries acknowledges, this appears to be simply a misstatement by the court (or a mistranscription) and the court presumably intended to say that the offenses were "predominantly *independent*."

of the appropriate term shall rest within the sound discretion of the court. . . . The court shall select the term which, in the court’s discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected” (§ 1170, subd. (b); Cal. Rules of Court, rule 4.420.)

The statutory sentencing scheme affords the trial court “broad discretion,” and a sentencing decision is reviewed for abuse of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) A sentencing choice should be based upon an “ ‘individualized consideration of the offense, the offender, and the public interest’ ” and a trial court abuses its discretion if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision. (*Ibid.*)

The court here set forth on the record the reasons for its sentencing choices, including reasons for its sentencing choice in imposing a consecutive term on charge of assaulting an executive officer (§ 1170, subd. (c)). Furthermore, except in the case of an unauthorized sentence, claims involving the trial court’s failure to properly make or articulate its discretionary sentencing choices are waived by failure to object at the time of sentence. (*People v. Scott* (1994) 9 Cal.4th 331, 353–354.) Humphries made no objection. The only request made by Humphries’s counsel at sentencing was that the court recommend Humphries for drug treatment within the Department of Corrections and Rehabilitation pursuant to section 1203.096.⁴ The court did so.

Humphries was represented by counsel at the time of his plea and at the time of sentencing. The record reflects that the trial court considered the relevant factors concerning both the charged offenses and Humphries’s background and history. Sentencing credits were properly awarded. No abuse of the trial court’s considerable sentencing discretion is shown. We find no arguable issues.

⁴ Humphries admitted that he has a drug problem, told the probation officer that he sold drugs to support his drug habit, and wrote to the court acknowledging his need for treatment.

DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.