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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.**

**JOSHUA JAMES WHITEHORSE,**

**Defendant and Appellant.**

**A135253**

**(Sonoma County  
Super. Ct. No. SCR606885)**

Joshua James Whitehorse appeals from a judgment of conviction and sentence imposed after he entered a plea of no contest to multiple offenses. His attorney has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (see *Anders v. California* (1967) 386 U.S. 738), in order to determine whether there is any arguable issue on appeal. We find no arguable issue and affirm.

**I. FACTS AND PROCEDURAL HISTORY**

An amended complaint charged Whitehorse with felony robbery in the second degree (Pen. Code, § 211), felony grand theft from a person (§ 487, subd. (c)), felony commercial burglary (§ 459), and misdemeanor fraudulent use of an access card (§ 484g, subd. (a)).<sup>1</sup> As to the robbery count, it was alleged that Whitehorse personally used a deadly weapon (§ 12022, subd. (b)(1)) and committed a serious or violent felony while on parole (§ 1203.085, subd. (b)). It was further alleged that he had a prison prior for purposes of section 667.5, subdivision (b).

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<sup>1</sup> All statutory references are to the Penal Code.

The probation department's presentence report described the underlying events as follows. Around 9 p.m. on August 18, 2011, victim Nancy told police that someone ripped her phone out of her hand, got into a car, and drove off. Witness Alan saw two large males sitting in the front seats of a purple PT Cruiser, and watched one of them run down Fourth Street, return to the car, and speed off. Around the same time, victim Cody was walking on Fourth Street with witness Kelli, when a burgundy PT Cruiser pulled up; the driver got out, pointed what looked like a semi-automatic pistol at Cody and yelled for him to hand over his wallet, while the passenger got out of the car and ran around to the driver's door. Afraid he would be shot if he did not comply, Cody threw his wallet (containing his credit card) on the ground, and the assailant picked it up and took off in the PT Cruiser. About ten minutes later, witness Michael reported to police that a recklessly-driven purple PT Cruiser almost hit him near Highway 101 and Todd Road; Michael followed the vehicle to a gas station, and when the driver and passenger saw him watching them, they hid their faces and sped away, running several red lights. Michael described the men to police, who also obtained a copy of the surveillance video of the robbery suspects. The gas station clerk remembered seeing the purple PT Cruiser and a man (Whitehorse) in the store while the other man used Cody's credit card for purchases. The next day, the police stopped the purple PT Cruiser and detained all of its occupants, including Whitehorse. Cody, Kelli and Alan were brought to the location of the stop; Cody identified Whitehorse as one of the people who robbed him and the PT Cruiser as having been used in the crime; Kelli identified Whitehorse as the person who robbed Cody and believed he was the one who pointed the gun at Cody's face and demanded his wallet. Another occupant of the vehicle told police that Whitehorse and his codefendant took turns that evening jumping out of the car with a model handgun and robbing people. Whitehorse acknowledged that he was in the car that evening, but he claimed it was his codefendant who took Nancy's cell phone and Cody's wallet. During an in-person lineup at the police station, Michael identified Whitehorse and the PT Cruiser.

On November 30, 2011, Whitehorse entered a plea of no contest to the charge of second-degree robbery (of victim Cody) and to the charge of felony grand theft from the

person (of victim Nancy) and admitted the allegations that he was on parole at the time of the robbery and had a prison prior; the remaining two counts and other enhancements were to be dismissed. In Whitehorse's written plea form and waiver of his constitutional rights, signed by Whitehorse and his defense attorney, Whitehorse represented that he understood and waived his right to trial and other specified rights, that the maximum punishment he could receive was six years eight months, but that by plea agreement probation would be denied and the custody term would be four years eight months. In court, while represented by his attorney, Whitehorse waived his right to a preliminary hearing, the court reviewed with Whitehorse his waiver and plea form, Whitehorse confirmed his understanding and waiver of his rights, the court found his waiver to be voluntary, knowing, and intelligent, Whitehorse entered his pleas and admitted the prior prison enhancement, and defense counsel stipulated to a factual basis for the plea. The matter was continued for sentencing.

On March 21, 2012, Whitehorse filed a motion to withdraw his plea, on the ground that he was unaware that his plea would lead his codefendant to threaten him and claim that Whitehorse was an informant, causing Whitehorse to spend his prison term in protective custody. (See § 1018.) Whitehorse also noted that his codefendant had been granted probation, while Whitehorse had pled to a deal that sent him to prison. The People opposed the motion, asserting that a plea may be withdrawn in the court's discretion only upon a showing of good cause by clear and convincing evidence, and that it was foreseeable to Whitehorse when he entered his plea that his codefendant would make it known that Whitehorse gave a confession implicating the codefendant. The People also argued that Whitehorse was merely disappointed that he received a less favorable disposition than his codefendant. The court denied Whitehorse's motion.

On April 19, 2012, the court sentenced Whitehorse, based on the negotiated disposition, to an aggregate term of four years eight months, comprised of the following: the mid-term of three years on the second-degree robbery count (§ 213, subd. (a)(2)); plus a consecutive eight months (one-third of the two-year midterm) on the felony grand theft count (§ 489, subd. (b); § 1170, subd. (h)(1)); plus a consecutive one year for the prison

prior enhancement (§ 667.5, subd. (b)). The remaining counts were dismissed. The court also imposed a restitution fine of \$240 pursuant to section 1202.4 and a restitution fine of \$240 pursuant to section 1202.45, suspended unless parole is revoked. No objection was made to the sentence or to the court's subsequent calculation of credits.

On April 23, 2010, Whitehorse filed a notice of appeal pursuant to California Rules of Court, rule 8.304, subdivision (b)(4)(B), basing the appeal on the sentence or other matters occurring after the plea that do not affect the validity of the plea.

On June 18, 2012, Whitehorse's appellate counsel filed an amended notice of appeal and application for a certificate of probable cause, aimed at expanding the grounds for appeal to include a challenge to the validity of the appeal (more specifically, the denial of his motion to withdraw his plea). The trial court granted the request for a certificate of probable cause.

## II. DISCUSSION

Whitehorse's appellate counsel represents in the opening brief in this appeal that he wrote to Whitehorse and advised him of the filing of a *Wende* brief and his opportunity to personally file his own supplemental brief within 30 days of the date of the filing of the *Wende* brief.

More than 30 days have passed since the filing of the *Wende* brief, and we have not received a supplemental brief from Whitehorse.

We find no arguable issues on appeal.

There are no legal issues that require further briefing.

## III. DISPOSITION

The judgment is affirmed.

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NEEDHAM, J.

We concur.

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JONES, P. J.

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BRUNIERS, J.