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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN J. BLANTON,

Defendant and Appellant.

A135262

(Napa County
Super. Ct. No. CR159844)

Following a plea of no contest to one count of receiving stolen property and admission of a prior strike conviction, defendant was sentenced to four years in state prison. Defendant filed a timely appeal from the judgment of conviction challenging the validity of the plea and admission. The trial court granted defendant a certificate of probable cause. As required under *People v. Kelly* (2006) 40 Cal.4th 106,124, we affirmatively note counsel for defendant has filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436) raising no arguable issue, counsel apprised defendant of his right to file a supplemental brief, and defendant did not file such a brief. Upon review of the record for potential error, we conclude no arguable issues are presented for review and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

Deputy Sheriff Kyle Eddleman was working patrol in the City of American Canyon when he was attracted to “a vehicle with expired registration displaying a fraudulent tab.” Eddleman initiated a traffic stop of the vehicle, had defendant, the driver, exit the vehicle, and walk back to the patrol car where he was detained. A cover officer watched a female passenger who remained in the vehicle. Defendant did not have a driver’s license and when asked to identify himself, gave a false name and date of birth. When Eddleman asked defendant if he had left his license in the car, defendant responded, “I don't know. Maybe.” Eddleman then proceeded to search the passenger compartment near the driver’s seat for defendant’s driver’s license. He did not find defendant’s driver’s license. Instead he found on the driver’s floorboard “numerous bank cards, debit cards, check cards, and a California driver’s license for a female juvenile” with nine different names listed on the cards. After being transported to the Napa County Department of Corrections, defendant gave his true name and date of birth. He admitted he was a “wanted parolee at large.”

An information filed against defendant on February 9, 2012 charged him with receiving stolen property (Pen. Code, § 496, subd. (a); count one) and misdemeanor giving false information to a police officer (Pen. Code, § 148.9, subd. (a); count two). The information alleged as to count one that defendant suffered one state prison prior (Pen. Code, § 667.5, subd. (b)) and two prior strikes (Pen. Code, § 667, subds. (b)–(i)).

On March 23, 2012, defendant pleaded no contest to receiving stolen property and admitted one of the strike priors in exchange for an indicated sentence of four years to run concurrent to any other sentence, including a parole violation. At defendant’s request, he was immediately sentenced to the midterm of two years, doubled pursuant to the strike prior for a total of four years in state prison. Various fees and fines were also imposed.

¹ Because the present appeal is taken from a no contest plea, we need only recite the facts pertinent to the underlying conviction as necessary to our limited review on appeal. The facts are taken from the preliminary hearing transcript.

DISCUSSION

In his written request for a certificate of probable cause, defendant challenges the validity of his plea because he was not advised about the case of *People v. Deay* (1987) 194 Cal.App.3d 280 (*Deay*). “It is his belief that the Deay case applies to strikes and would have impacted the District Attorney’s ability to prove up both of the alleged strikes in his case.”

In *Deay*, the information alleged the defendant had been previously convicted of two serious felonies within the meaning of Penal Code section 667, subdivision (a). Documents submitted to the trial court disclosed that in one proceeding, the defendant pled guilty to both prior convictions. The trial court found true each section 667 allegation and imposed two consecutive five-year enhancements. The appellate court reversed the trial court’s imposition of one of the enhancements because the two prior convictions were not “ ‘on charges brought and tried separately’ (§ 667, subd. (a)).” (*Deay, supra*, 194 Cal.App.3d at p. 286.) Because defendant in the instant matter was charged with two prior strikes with the same conviction date and case number, defendant claims in his certificate of probable cause that *Deay* applies.

Defendant is wrong. While *Deay* applies to serious felonies within the meaning of Penal Code section 667, subdivision (a), it has no bearing on prior strike convictions. (*People v. Fuhrman* (1997) 16 Cal.4th 930.) In *Fuhrman*, our Supreme Court held nothing contained within the general statutory language of the “Three Strikes” law “suggests that when a defendant has sustained a prior conviction for an offense designated as a violent or serious felony, the prior conviction may be counted as a strike for purposes of sentencing under the Three Strikes law only if the prior conviction was for an offense that was ‘brought and tried separately’ from another offense that also qualified as a violent or serious felony.” (*Fuhrman*, at p. 938.) Here, under the holding of *Fuhrman*, defendant’s prior strike convictions did not have to be brought and tried separately. As a result, neither the court nor trial counsel was required to advise defendant about the *Deay* case.

During the period of time defendant's plea and sentence were negotiated, defendant was ably represented by counsel. Defendant signed a plea and waiver of rights form which fully informed him of the consequences of his plea and the rights he would be giving up by his plea before it was entered, and the record satisfactorily shows the trial court made certain defendant's plea was fully informed and freely made.

There was no sentencing error.

There are no legal issues requiring further briefing.

The judgment and sentence imposed are affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Banke, J.