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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

YOHANNES TEKIE GEBREZGI,

Defendant and Appellant.

A135437

(Sonoma County  
Super. Ct. Nos. SCR593029, SCR593030,  
SCR593031, SCR593032, SCR593033,  
SCR593245)

Defendant Yohannes Tekie Gebrezgie appeals from judgments entered following no contest pleas in six cases. His attorney has asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was informed of his right to file a supplemental brief, which he has not done. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

**Factual and Procedural History**

On November 30, 2010, five criminal complaints were filed charging defendant as follows:

In case number SCR593029, defendant was charged with felony violations of Health and Safety Code sections 11370.1 (possession of methamphetamine while armed with a loaded firearm), 11378 (possession of methamphetamine for sale), and 11379, subdivision (a) (transportation of methamphetamine). All three counts alleged

enhancements for prior convictions under sections 11370, subdivisions (a) and (c) and 11370.2, subdivision (c). The complaint also charged felony violations of Penal Code<sup>1</sup> sections 12021, subdivision (a)(1) (felon possessing firearm) and 12031, subdivision (a)(1) (carrying loaded firearm), with a special allegation under subdivision (a)(2)(B) that the gun was stolen. According to the probation report, the above charges were based on a confidential reliable informant's (CRI) purchase of a firearm and methamphetamine from defendant on November 17, 2010.

In case number SCR593030, defendant was charged with a felony violation of Vehicle Code section 2800.2, subdivision (a) (evading peace officer's vehicle with wanton/willful disregard) and a misdemeanor violation of Vehicle Code section 20002, subdivision (a) (hit-and-run from property damage). According to the probation report, the above charges are based on allegations that on July 13, 2010, defendant fled from the police after leading officers on a high speed chase through a residential neighborhood and crashing his car into a fence.

In case number SCR593031, defendant was charged with felony violations of sections 12280, subdivision (a)(1) (transporting/offering to sell assault weapon), 12021, subdivision (a)(1) (felon possessing firearm), and 12031, subdivision (a)(1)(B) (carrying loaded stolen firearm in public). According to the probation report, the above charges were based on a CRI's purchase of a firearm from defendant on October 19, 2010.

In case number SCR593032, defendant was charged with a felony violation of section 12021, subdivision (a)(1) (felon possessing firearm). According to the probation report, this charge was based on the CRI's purchase of firearms from defendant on November 4, 2010.

In case number SCR593033, defendant was charged with felony violations of Health and Safety code sections 11359 (possession of marijuana for sale) and 11360, subdivision (a) (transportation of marijuana), each count alleging two prior convictions.

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

According to the probation report, these charges were based on a CRI's purchase of marijuana from defendant on September 7, 2010.

On December 3, 2010, a sixth felony complaint was filed charging defendant, in case number SCR593245, with felony violations of sections 12280, subdivision (b) (possessing assault weapon with effaced serial number); 12021, subdivision (a)(1) (felon possessing firearm); and 496d, subdivision (a) (receiving stolen property); and of Health and Safety Code sections 11359 (possession of marijuana for sale) and 11360, subdivision (a) (transportation of marijuana), each count alleging two prior convictions. According to the probation report, these charges were based on evidence found during the execution of a search warrant on defendant's home and vehicle following his arrest on December 1, 2010.

Although preliminary hearings were commenced in some of the above cases in early January 2011, by January 18 defendant apparently had been transferred to federal custody where he was being held on other criminal charges. Between January 18 and January 24, warrants were issued for defendant's arrest in each of the Sonoma County cases after defendant failed to appear in court.

On May 6, 2011, defendant was convicted of two federal firearm charges. Sometime thereafter, defendant apparently made a request under section 1381.5 to be returned to Sonoma County for a jury trial on the pending state charges. On May 26, the prosecutor filed a response indicating that the request was premature as defendant had not yet been sentenced in federal court.

On July 29, 2011, defendant was sentenced to 151 months in federal prison.

On October 11, 2011, the court filed, at the prosecutor's request, an order for defendant's temporary removal and transfer from federal custody and a writ of habeas corpus ad prosequendum. On October 31, following his transfer to the temporary custody of the Sonoma County Sheriff's Department, defendant appeared in custody in the Sonoma County Superior Court.

On December 1, 2011, defendant pled no contest to the charge of possessing of methamphetamine for sale in case number SCR593029. By stipulation, this was

designated the principal case and carried a negotiated sentence of two years eight months, to be served consecutive to his federal sentence. Defendant also pled no contest to the charge of evading a peace officer in case number SCR593030, no contest to the charges of being a felon in possession of a firearm in case numbers SCR593031 and SCR593032, no contest to the charge of possessing marijuana for sale in case number SCR593033, and no contest to the charges of being a felon in possession of a firearm and of possessing marijuana for sale in case number SCR593045. Pursuant to the stipulation, defendant was to be sentenced to eight-month terms on each count pled to in the above cases, to run consecutively to his federal sentence and his other Sonoma County cases. Defendant was sentenced in conformity with the negotiated plea and the remaining charges were dismissed.

Defendant filed a timely notice of appeal and was granted a certificate of probable cause to challenge the “manner in which the defendant was removed from federal custody into state jurisdiction.”

### **Discussion**

Section 1381.5 provides a procedure for prisoners incarcerated at a federal prison in California to demand that they be brought to trial in California state court so that they may receive a sentence on pending state charges concurrent with the term of imprisonment they are already serving. The prosecutor properly rejected defendant’s May 2011 request that he be brought to trial on the ground that the protections provided by section 1381.5 do not arise until the defendant has been sentenced in the federal proceedings and defendant was not sentenced until July 2011. (Pen. Code, § 1381.5 [transfer request may be made “[w]henver a defendant has been convicted of a crime and has entered upon a term of imprisonment therefor in a federal correctional institution located in this state, and at the time of entry upon such term of imprisonment or at any time during such term of imprisonment”].)

Defendant did not renew his section 1381.5 request following his federal sentencing. His premature request cannot be construed as such a request. (*People v. Rogers* (1988) 201 Cal.App.3d 286, 290 [motion made while defendant incarcerated in

federal facility out of state could not be construed as section 1381.5 demand even though he was later transferred to federal facility located in California]; *People v. Clark* (1985) 172 Cal.App.3d 975, 980-981 [demand for speedy trial under section 1381 was premature because defendant was still being housed in county jail when the demand was filed and it did not trigger time limits upon his transfer to state prison].)

Even assuming section 1381.5 was triggered following defendant's sentencing in federal court, or that defendant's counsel was deficient in failing to file a renewed demand, the record does not establish that the prosecutor failed to comply with the statutory requirements. Section 1381.5 requires that upon receiving a demand for trial from a defendant in federal custody, the district attorney must "promptly inquire" of the federal authorities as to the defendant's availability to be tried in state court. The 90-day time line starts to run only after the prosecution has received such assent. (§ 1381.5.) The record does not reveal when the prosecutor inquired of the federal authorities or received their assent. Presumably, federal assent was sought prior to September 29, when the prosecutor submitted the proposed transfer order to the court. We do not believe the two-month period constitutes an unreasonable delay. In any event, defendant waived time two days after appearing in state court. Having waived time, defendant cannot complain that he was thereafter denied a speedy trial. (§ 1381.5 [statute requires defendant be brought to trial within 90 days "unless the defendant requests, in open court, and receives, or, in open court, consents to, a continuance, in which event he may be brought to trial or sentencing within 90 days from such request or consent"].)

We find no arguable issue with respect to defendant's negotiated plea and sentencing. By entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crime, and therefore is not entitled to review of any issue that goes to the question of guilt. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) The sentence imposed is authorized by law and conforms to the terms of the plea agreement.

**Disposition**

The judgments are affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.