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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.

BERRY LAMIRIS ADAMS,

Defendant and Appellant.

A136127

(Sonoma County
Super. Ct. No. SCR 606189)

Following a plea of no contest to one count of felon in possession of a firearm and admission of a prior strike and a prior prison term, defendant was sentenced to seven years in state prison. Defendant has filed a timely appeal from the judgment of conviction challenging the validity of the plea and admissions, the sentence, and other matters occurring after the plea. The trial court denied defendant's request for 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

On April 22, 2011, Kevin Craft contacted Kimberly Christian asking her to meet him at the Best Western Inn on Redwood Drive. Prior to Craft's arrival, Christian contacted her boyfriend, defendant, to arrange for a cell phone line to be open while she met with Craft. While Christian and Craft were in the hotel room, Craft removed a handgun from his pants, pointed it at Christian, and demanded money and her cell phone. After hearing the commotion, defendant entered the hotel room where he observed Craft holding a gun. Craft pointed the gun at defendant and pulled the trigger, but the gun did not fire. Defendant then pulled out his gun and fired at Craft. He fired again before Craft left the room. Craft walked downstairs to his vehicle and entered it. Shortly thereafter, he exited his vehicle and lay down on the street. Police officers responded to the hotel where they discovered Craft's dead body.

An information was filed on February 28, 2012, charging defendant with one count of pimping (Pen. Code, § 266h, subd. (a); count I),² and one count of felon in possession of a firearm (former § 12021, subd. (a)(1); count II). The information alleged defendant personally used a deadly and dangerous weapon in the commission of count I. (§§ 12022, subd. (b)(1) & 1170, subds. (f), (h)(3).) It was further alleged defendant suffered one prior strike (§ 1170.12) and two prior prison terms (§ 667.5, subd. (b)).

On December 20, 2011, the court heard and denied without prejudice defendant's *Marsden*³ motion. A second *Marsden* hearing was conducted on April 5, 2012. Although the court found no basis for granting the motion, it found good cause to replace the public defender and appoint new counsel.

The following day, the court initially stated it was appointing conflict counsel, but after being advised defendant's prior public defender, James Loughborough, would be

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 presentence report.

² Unless otherwise indicated, all statutory references are to the Penal Code.

³ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

available to represent defendant in trial, the court decided not to relieve the public defender. Defendant then indicated he wanted to represent himself. The court strongly discouraged him from doing so and denied his request, but provided him with a *Faretta*⁴ waiver form to review before the court could “make findings that you’re competent to represent your interests.” Finally, the court heard and denied defendant’s *Marsden* motion as to Mr. Loughborough.

Less than a week later, pursuant to an “open plea” agreement with a *Harvey*⁵ waiver, defendant pled no contest to count II, felon in possession of a firearm, and admitted a prior strike and one prison prior. In exchange for his plea, the prosecution agreed to dismiss count I and the other enhancements. Under the plea agreement, the maximum punishment defendant could receive was seven years. Counsel stipulated and the court found a factual basis for the plea and admission based on the discovery provided.

Prior to imposing sentence on June 28, 2012, the court denied defendant’s *Romero*⁶ motion to strike his 2002 prior strike conviction for burglary. After finding a number of aggravating factors and acknowledging there was provocation, but finding no other mitigating factors, the court imposed the aggravated term of six years on count II, plus one year for the prior prison enhancement for a total sentence of seven years. Defendant was awarded 255 actual days in custody plus 126 days conduct credit for a total of 381 days. The court imposed a restitution fine, along with additional fines.

DISCUSSION

By entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crimes, and therefore is not entitled to review of any issue going to the question of guilt. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Without a certificate of probable cause, defendant cannot contest the validity of the plea.

⁴ *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

⁵ *People v Harvey* (1979) 25 Cal.3d 754 (*Harvey*).

⁶ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

(§ 1237.5; Cal. Rules of Court, rule 8.304(b)(2).) Defendant did not obtain a certificate of probable cause.

We have reviewed the transcripts of the *Marsden* hearings. The trial court did not err in denying defendant's motions to have new counsel appointed. We have also reviewed the transcript relating to defendant's request to represent himself. The court stated before it could rule on his competency to represent himself, defendant needed to review the *Faretta* waiver form given to him. Defendant neither presented the court with the filled-out form nor brought up the issue of self-representation again. The trial court consequently committed no *Faretta* error.

We further find no meritorious sentencing errors. The court sentenced defendant to no more than the agreed upon maximum sentence of seven years. Defendant's possession of a weapon during the commission of the offense and his extensive prior criminal history more than justified the court's imposition of the aggravated term. The court also did not abuse its discretion in denying defendant's *Romero* motion.

In sum, we have reviewed the record on appeal and find no issues requiring further briefing. The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Dondero, J.