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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LAMAR LOUIS TATE,

Defendant and Appellant.

A137428

(San Mateo County
Super. Ct. No. SC076962A)

Appellant, Lamar Louis Tate, appeals from a judgment entered on his no contest plea to second degree burglary. His court-appointed counsel has filed a brief raising no issues and requesting this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. As the appeal is based solely on grounds occurring after entry of the plea and does not challenge the validity of the plea, it is authorized. (Cal. Rules of Court, rule 8.304(b)(4).)

FACTS AND PROCEEDINGS BELOW

As will be seen, no preliminary hearing was held in this case and no probation report documenting the facts was prepared. We therefore take the facts from the police report.

On October 27, 2010, Foster City police officers responded to a dispatch that a young Black male was then at the Bank of America branch on East Hillsdale Boulevard, attempting to cash a fraudulent check on a checking account that had been flagged for fraudulent activity. When the officers arrived, the suspect, appellant, told them he was cashing a check for \$1,789.34 made out to him by Carlos Marcet for roofing work done

on his home. When contacted by the police, Marcet said he did not know appellant, and also that the previous day a fraudulent check had been written on his account. Appellant was arrested and transported to the San Mateo County jail.

On January 5, 2011, appellant was charged by the San Mateo County District Attorney with one felony count of second degree burglary (Pen. Code, § 460, subd. (b)),¹ two felony counts of forgery (§§ 470, 476), and one felony count of attempted grand theft. (§§ 664/487, subd. (a).)

On November 14, 2012, after waiving his right to a preliminary hearing and his *Boykin/Tahl*² rights, appellant entered a plea of no contest to second degree burglary, the offense charged in count 1 of the complaint. The plea was entered on the understanding the court would suspend imposition of sentence and place appellant on probation, including a one-year term in county jail. Defense counsel stipulated to the use of a police report as the factual basis of the plea.

After appellant waived his right to a probation report, the court immediately proceeded to sentencing. As earlier indicated, the court suspended imposition of sentence and placed appellant on probation for three years. As a condition of probation, and as the court had also indicated, a one-year county jail term was also imposed, and allowing a total of 16 days of credit for time served and work time. (§§ 2900.5, 4019.)

The court also imposed standard terms of probation, including a four-way search clause (person, residence, vehicle, and “any area under your immediate custody and control” at any time, without consent or a warrant or probable cause), ban on the possession of deadly weapons, counseling, treatment as directed by the probation department, that he maintain full-time employment or vocational training as directed, and that he submit to genetic marker testing.

Lastly, the court imposed a \$240 restitution fine (§ 1202.44, subd. (b)), a \$40 court security fee (§ 1465.8), a \$30 criminal conviction assessment (Gov. Code, § 70373), and a probation supervision fee not to exceed \$100 per month (§ 1203.1b).

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

² *Boykin v. Alabama* (1969) 395 U.S. 238, *In re Tahl* (1969) 1 Cal.3d 122.

Appellant stated that he understood and accepted the terms and conditions of probation.

On December 26, 2012, appellant filed a timely notice of appeal.

DISCUSSION

Where, as here, an appellant has pled not guilty or no contest to an offense, the scope of reviewable issues is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896.)

Nothing in the record indicates appellant was mentally incompetent to stand trial or to understand the admonitions he received from the court prior to entering his plea, and to thereupon enter a knowing and voluntary plea.

The admonitions given appellant at the time he entered his plea fully conformed with the requirements of *Boykin v. Alabama, supra*, 395 U.S. 238 and *In re Tahl, supra*, 1 Cal.3d 122, and his waiver was knowing and voluntary.

The only question relating to the plea appearing from the record is whether there was a factual basis for appellant's plea. On November 14, 2012, when appellant's plea was taken, the court asked defense counsel: "Mr. Newbould, do you concur in the plea, in the waivers, and stipulate to the factual basis?" Counsel responded, "Yes I do. And I stipulate to a factual basis based on the police report." The police report was not, however, contained in the appellate record transmitted to this court by the San Mateo Superior Court, and the clerk of that court was unable to provide us a copy. On July 23, 2013, the clerk of our court received a copy of the police report from San Mateo County Deputy District Attorney Megan Williams, who represented the People in this matter in the superior court. An order augmenting the appellate record with the report was filed the next day. The substance of the report, and the attached copies of fraudulent checks payable to appellant written on Carlos Marcet's Bank of America checking account, unquestionably provide a factual basis for appellant's plea.

Appellant was at all times represented by competent counsel who protected his rights and interests.

The sentence imposed is authorized by law.

Our independent review having revealed no arguable issues that require further briefing, the judgment of conviction, which includes the sentence imposed, is affirmed.

Kline, P.J.

We concur:

Haerle, J.

Lambden, J.