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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.
BILL M. FELLS, JR.,
Defendant and Appellant.

A139277

**(Alameda County
Super. Ct. No. C170478)**

The People charged appellant Billy M. Fells, Jr., with various felonies, including three counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),¹ three counts of forced oral copulation (§ 288a, subd. (c)(2)(A)), two counts of second degree robbery (§ 211), and kidnapping to commit rape (§ 209, subd. (b)(1)). The information alleged various sentencing enhancements. Appellant pleaded not guilty. During in limine motions, appellant moved to replace appointed counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). Following a hearing, the trial court denied the motion. During jury selection, appellant made a second *Marsden* motion. The court held a hearing on the motion and denied it.

Following jury selection, appellant pleaded no contest to three counts of forcible rape (§ 261, subd. (a)(2)) and two counts of second degree robbery (§ 211) in exchange for 20 years in state prison. Appellant acknowledged his plea was entered freely and

¹ Unless otherwise noted, all further statutory references are to the Penal Code. We omit the facts relating to the underlying offenses as they are not relevant to this appeal.

voluntarily, his judgment was not impaired, and he understood the guilty plea surrendered his rights to confront and cross-examine witnesses against him and to present evidence. At the sentencing hearing, appellant moved — a third time — to replace appointed counsel pursuant to *Marsden*. He also moved to withdraw his plea. Following a hearing, the court denied both motions and sentenced appellant in accordance with the plea agreement.

Appellant appealed and requested a certificate of probable cause (§ 1237.5), which the trial court denied. We appointed counsel to represent appellant on appeal. Counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues and asking this court to review the record to “determine whether it contains any arguable sentencing issues or other post-plea issues.” Counsel informed appellant he had the right to file a supplemental brief on his own behalf. Appellant filed a supplemental brief arguing: (1) trial counsel was ineffective for failing to investigate his “past and present mental conditions” in connection with his motion to withdraw the plea; and (2) the court erred by failing to “conduct a trial” on his mental competency in connection with his motion to withdraw the plea.

We have examined the record pursuant to *Wende* and find no reasonably arguable appellate issue. Because the trial court denied appellant’s request for a certificate of probable cause, his appeal is limited to “postplea claims, including sentencing issues, that do not challenge the validity of the plea.” (*People v. Cuevas* (2008) 44 Cal.4th 374, 379.) The court imposed appellant’s sentence in accordance with the plea agreement and properly denied his *Marsden* motion, made at the sentencing hearing. Without a certificate of probable cause, appellant may not challenge the trial court’s denial of his motion to withdraw the plea, nor claim he was denied effective assistance of counsel in connection with that motion. (*People v. Johnson* (2009) 47 Cal.4th 668 [defendant’s claim that he was denied effective assistance of counsel on motion to withdraw no contest plea required certificate of probable cause]; *People v. Ribero* (1971) 4 Cal.3d 55, 62-64 [certificate of probable cause required to appeal from denial of motion to withdraw plea],

superseded by statute on another ground as stated in *In re Chavez* (2003) 30 Cal.4th 643, 656.)²

DISPOSITION

The judgment is affirmed.

Jones, P.J.

Simons, J.

Needham, J.

² Were we to address the claims raised in appellant’s supplemental brief, we would reject them as unsupported by the record. At the hearing on appellant’s third *Marsden* motion, appellant claimed he suffered from “mental depression” and wanted to move to withdraw the plea because he “didn’t have clear judgment because of mental illness issues . . . he wasn’t thinking right, and that there were voices in his head saying that he needed to take the deal.” At that same *Marsden* hearing, appellant also complained about trial counsel’s “failure to pursue a competency proceeding.” In response, trial counsel stated he investigated appellant’s claims and obtained appellant’s medical records, which did not contain “anything that would indicate that Mr. Fells was incompetent; that he didn’t understand what was going on; that he was complaining of hallucinations[.]” As trial counsel explained, appellant’s medical records indicated jail personnel were “concerned that he might be either faking or exaggerating some of his symptoms, and that comes particularly after the change of plea.” Trial counsel also noted appellant did not raise the competency issue until after his change of plea. As counsel noted, “Mr. Fells wanted to proceed to jury trial on the issue of guilt or innocence in this case as fast as possible and did not want to have anything delay[ing] that for any reason. [¶] And Mr. Fells did not ask for a competency trial, and something came up for the first time after his change of plea.” At the conclusion of the hearing, the court determined there was no ineffective assistance of counsel.