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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.

RICHARD DANIEL FATA,

Defendant and Appellant.

A139738

(Lake County
Super. Ct. No. CR-931592)

After pleading no contest to possession of a firearm by a felon and resisting a police officer and admitting a prior strike, defendant Richard Fata was sentenced to four years in state prison. He appeals, and his appointed counsel has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, to determine if there are any arguable issues that require briefing. Defendant was apprised of his right to file a supplemental brief, but he did not do so. We have conducted our review, conclude there are no arguable issues that require briefing, and affirm.

FACTUAL BACKGROUND

In its probation report, the probation department described the incident leading to defendant's arrest as follows¹:

“On January 23, 2013, Clearlake Police officers received a report of a firearm being discharged in the Pearl Avenue area of Clearlake. The initial report indicated there

¹ We derive the factual background from probation department's report, since defendant pleaded no contest before trial.

were two white male subjects in the area who had been yelling at each other and one had brandished a weapon.

“Upon the first officer’s arrival, he contacted two subjects and detained them as other officers were arriving. The officer heard another shot approximately 100 yards from where he had detained the first two subjects. When officers went to that area, they observed the defendant, Richard Fata, walking down the street. The two officers stopped their vehicle and illuminated the individual with spotlights and took cover behind the doors of their vehicle. They ordered the defendant to take his hands out of his pockets and stop walking towards them. At gun point, the officers again ordered the defendant to take his hands out of his pockets and to stop walking towards them. The defendant stated, ‘Just shoot me’ loudly while he was walking towards the patrol vehicle.

“When the defendant came within 10 feet of the patrol vehicle, one of the officers discharged his taser towards the defendant and struck him on the back. The defendant continued to walk towards the officer exhibiting minimal effect by the taser.

“After it was apparent the taser was ineffective on the defendant, another officer walked up behind the defendant and took control of his right arm. The defendant was taken to the ground and another officer came up and took control of the defendant’s left arm and he was placed in handcuffs without further incident. It should be noted that it took three strikes from a flashlight on the defendant’s left shoulder to gain compliance allowing him to be handcuffed.

“When the defendant was searched, a firearm was found concealed inside the defendant’s right front jacket pocket, where his hands had been located. The firearm was a .38 caliber revolver and was fully loaded, minus two spent casings in the cylinder. Also found during the search of the defendant’s person was a full box of .38 caliber ammunition concealed inside the inner right pocket of the defendant’s jacket and a black leather holster fastened to the defendant’s belt.

“The defendant was placed under arrest and he was transported to St. Helena Hospital Clearlake for medical clearance and for medical attention to a laceration to his right temple. The injury to the defendant occurred during his being taken to the ground,

as a result of his failing to follow officers' directions. A Clearlake Police officer suffered an injury to the middle finger of his left hand, which he was also provided medical assistance for while at the hospital.

“While at the hospital, the defendant was advised his *Miranda* warning, which he stated he understood. When asked if he wanted to waive his rights, the defendant stated he did and advised the officer he was upset about somebody coming to his house and ‘fucking’ with him. He also stated he did not discharge any rounds from his firearm, and would have shot the officer if he had shot at him. The defendant stated, ‘People come to my house, treat me wrong, and I do what I have to do.’

“After defendant was cleared for housing, he was transported to the Hill Road Correctional Facility where he was booked on related charges.”

PROCEDURAL BACKGROUND

By amended complaint filed on February 25, 2013, defendant was charged with the following five felonies: discharge of a firearm with gross negligence (count I; Pen. Code, § 246.3, subd. (1)); felon in possession of a firearm (count II; § 29800, subd. (a)(1)); carrying a concealed firearm (count III; Pen. Code, § 25400, subd. (a)(2)); felon in possession of ammunition (count IV; Pen. Code, § 30305, subd. (a)(1)); and resisting a police officer by force or violence (count V; Pen. Code, § 69.) The complaint also alleged that at the time of his arrest, defendant was in possession of a firearm, having been previously convicted of three violent felonies (Pen. Code, § 1203.06, subd. (a)(2)), and had three prior strike convictions (Pen. Code, §§ 667, subd. (b)–(i), 1170.12, subd. (a)–(d)) and three serious and violent felony convictions (Pen. Code, §§ 667, subd. (a)(1), 1203, subd. (e)(4)).

On May 13, pursuant to a negotiated plea agreement, defendant pleaded no contest to felony possession of a firearm by a felon and misdemeanor resisting a police officer and admitted a prior strike allegation. It was an open plea and, on the plea form, defendant acknowledged that his maximum time of imprisonment under the plea was seven years. In exchange for the plea, the remaining counts and enhancements were dismissed.

On July 1, defendant filed a *Romero*² motion seeking to strike the prior strike.

The sentencing hearing was held on August 26. After denying defendant's *Romero* motion, the court sentenced defendant to two years on the possession count, doubled to four years due to the strike, with a concurrent one-year term for resisting arrest, for a total term of four years in state prison. Defendant was awarded 216 days of credit for time served and 216 days of conduct credit, for a total of 432 days of credit. The court also imposed a \$1,260 restitution fine pursuant to Penal Code section 1202.4, subdivision (b), an \$80 court operations assessment pursuant to Penal Code section 1465.8, and a \$60 criminal conviction assessment pursuant to Government Code section 70373.

Defendant filed a timely notice of appeal, indicating that the "appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea."

DISCUSSION

Where, as here, defendant has pleaded guilty or no contest to an offense, the scope of issues reviewable on appeal 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 suggests defendant was mentally incompetent to stand trial or understand the admonitions he received from counsel and the court prior to entering his plea, and thereupon enter a knowing and voluntary plea.

The admonition given defendant by the court at the time defendant entered his plea fully conformed to the requirements of *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122, and his subsequent waiver of rights was knowing and voluntary.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

The sentence conforms to the terms of the plea agreement and is authorized by law.

We have reviewed the entire record, focusing upon grounds for appeal arising after entry of the plea. Having done so, we conclude there is no arguable issue on appeal.

DISPOSITION

The judgment of conviction is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Brick, J.*

* Judge of the Alameda Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.