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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.

MICHAEL DAVID MORRISON,

Defendant and Appellant.

A144854

(Napa County
Super. Ct. No. CR171923)

Appellant Michael David Morrison appeals from a judgment following his no contest plea to one count of carrying a concealed dirk or dagger (Pen. Code, § 21310).¹ Appellant’s counsel has raised no issue on appeal and asks this court for an independent review of the record to determine whether there are any arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Appellate counsel advised appellant of his right to file a supplementary brief to bring to this court’s attention any issue he believes deserves review. (*People v. Kelly* (2006) 40 Cal.4th 106.) Appellant has not filed such a brief. We have reviewed the entire record, find no arguable issues, and affirm.

BACKGROUND

In September 2014, appellant was charged with two felony counts of possession of a dirk or dagger. According to the probation report, the charges arose from a July 2014

¹ All undesignated section references are to the Penal Code.

incident in which a law enforcement officer discovered two fixed-blade knives with approximately four-inch long blades concealed on appellant's person. Appellant told the officer he kept the knife "because he had been 'punched a few times.' "

In October 2014, appellant entered into a plea agreement in which he agreed to plead no contest to one count of possession of a dirk or dagger in exchange for a term of confinement not to exceed 90 days. Prior to entering the plea, appellant told the trial court, "I was supposed to do some research in the law library and stuff, and I didn't get a chance to see if the elements to fight this case [sic]." Defense counsel represented to the court, "I have discussed the case with Mr. Morrison, explained to him the elements of the offense, the possible punishments, his procedural rights, and the factual definitions, and such. So I believe that Mr. Morrison has been informed of all the necessary legal issues." The trial court initially appeared inclined to allow appellant a brief continuance, but when it became clear the continuance would need to be longer because of counsel's unavailability, the trial court denied the continuance. Appellant proceeded to enter a no contest plea to one count. The second count was dismissed.

At the February 2015 sentencing hearing, the trial court denied appellant's request to reduce the felony conviction to a misdemeanor in light of appellant's extensive criminal record. The court suspended imposition of sentence and placed appellant on three years formal probation. The court imposed a 28-day term in county jail, with 28 days of custody credit. The court imposed various terms and conditions of probation, as well as certain fines and fees.²

In March, appellant filed a motion to withdraw his no contest plea on the ground that he "denies that he carried concealed on his person a dirk or dagger." Appellant's trial counsel filed the motion but informed the court he did not think it was in appellant's best interests. At the hearing, appellant personally argued "one of the counts of dirk or dagger . . . doesn't meet the quick ready stabbing device element" because "[i]t's got a

² A form in the record initially indicated appellant owed a \$180 booking fee that the trial court waived at sentencing. In response to a letter from appellate counsel pointing out the error, the trial court ordered this form corrected.

rounded point” and “can’t stab anything.” Trial counsel explained appellant “had two knives. One of them had a pointy tip, one of them did not. So if he only had the blunt tipped one, he would have a strong argument that he’s not guilty of either. He pled to one count and he had one pointy object.” The trial court described photographs of the knives on the record, without objection from the parties, as follows: “these are two apparently steak knives with plastic handles. One has a point and the other it’s not clear it has a point” The trial court denied appellant’s motion to withdraw, finding no good cause and reasoning in part, “a four and a half inch kitchen knife, also known as a steak knife is a weapon capable of or within the definition of a dirk or dagger.”

Appellant filed a notice of appeal challenging both his sentence and the validity of his plea. Appellant requested a certificate of probable cause from the trial court on the following grounds: “Client is claiming factual innocence. He says that the knife in question does not meet the statutory definition of a dirk or dagger.” The trial court denied the request.

DISCUSSION

Appellant was adequately represented by legal counsel throughout the proceedings. He completed a plea form that described the constitutional rights he was waiving by entering a no contest plea and the trial court confirmed that he read the form, had no questions, and waived his rights. In light of these facts and defense counsel’s representation that he discussed the elements, definitions, procedural rights, and potential punishments with appellant, the trial court properly found appellant’s plea was knowing and voluntary. (*People v. Mosby* (2004) 33 Cal.4th 353, 360 [relevant inquiry is “whether ‘the record affirmatively shows that [the admission] is voluntary and intelligent under the totality of the circumstances’ ”].)

At the plea hearing, defense counsel stipulated to a factual basis for the plea but did not identify any documents or specific facts underlying this basis. However, the plea waiver form signed by appellant, defense counsel, and the prosecutor stipulated to a factual basis in the police report; to the extent this was insufficient, any error was harmless. (*People v. Holmes* (2004) 32 Cal.4th 432, 440 [while “[a] summary recitation

that “[t]here’s a factual basis” ’ ’ is inadequate, “[w]hen both parties stipulate on the record to a document, such as a police report, the factual basis requirement is met”]; *id.* at p. 443 [any error “harmless where the contents of the record support a finding of a factual basis for the conditional plea”].)

Without a certificate of probable cause, appellant may not challenge the trial court’s denial of his motion to withdraw the plea. (*People v. Johnson* (2009) 47 Cal.4th 668, 679.) The trial court’s denial of appellant’s request for a certificate of probable cause was proper. (See § 16470 [“ ‘dirk’ or ‘dagger’ means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death”].)

The sentence was consistent with the plea agreement. The court’s denial of appellant’s request to reduce the conviction to a misdemeanor was not an abuse of discretion. (§ 17, subd. (b).) The probation conditions are authorized by law and not an abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120–1121.)

The court imposed a probation supervision fee (§ 1203.1b) “in an amount not to exceed \$240.00” per year and found appellant had the ability to pay a portion of the indigent defense costs (§ 987.8) in the amount of \$100. Appellant forfeited any challenge to these fees by failing to object in the trial court. (*People v. Aguilar* (2015) 60 Cal.4th 862, 864 (*Aguilar*).)³

DISPOSITION

The judgment is affirmed.

³ Although *Aguilar* declined to address “whether a challenge to an order for payment of the cost of the services of appointed counsel is forfeited when the failure to raise the challenge at sentencing may be attributable to a conflict of interest on trial counsel’s part” (*Aguilar, supra*, 60 Cal.4th at p. 868, fn. 4), no indication of conflict is present here. Appellant was represented by a public defender and we have no reason to presume trial counsel would obtain any direct benefit from the fee, which will be paid to the county. (§ 987.8, subd. (e).)

SIMONS, J.

We concur.

JONES, P. J.

NEEDHAM, J.

(A144854)