

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CYNTHIA ANN BOYD O'CAMPO,

Defendant and Appellant.

A145079

(Sonoma County
Super. Ct. No. SCR-648516)

Pursuant to a negotiated disposition, appellant Cynthia Ann Boyd O'Campo entered pleas of no contest to receiving stolen property (Pen. Code, § 496, subd. (a))¹ and identity theft (§ 530.5, subd. (c)(2)), with an agreed maximum custodial sentence of three years eight months. She was initially referred to drug court, but later declined to participate. The court revoked O'Campo's probation because she was no longer participating in the drug court program, and imposed a midterm sentence of two years in county jail.²

¹ Undesignated statutory references are to the Penal Code.

² The court had earlier granted O'Campo's motion under Proposition 47 to reduce her conviction for receiving stolen property to a misdemeanor, but denied the motion as to the identity theft charge. The last month of O'Campo's sentence was suspended to allow for mandatory postrelease supervision. The court awarded 37 days of presentence credit and imposed fines and fees including a \$300 restitution fine, \$300 parole revocation fine, \$40 court security fee, \$30 conviction assessment, and \$250 public defense fund fee.

Assigned counsel has submitted a *Wende*³ brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that O’Campo has been advised of her right to personally file a supplemental brief raising any points which she wishes to call to the court’s attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

DISCUSSION

Facts underlying the charges against O’Campo are not relevant to this discussion. No cognizable issues are before us relating to O’Campo’s guilt or to her plea. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1097.)

O’Campo seeks to challenge on appeal the validity of her guilty plea on the basis of her “mental health,” alleging she had a diagnosed mental condition that rendered her plea involuntary. The trial court denied her request for a certificate of probable cause to allow her to do so. Under section 1237.5 and California Rules of Court, rule 8.304(b), a defendant seeking to appeal after entering a guilty or no contest plea generally must first obtain a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74–76.) A challenge to the voluntariness of a defendant’s guilty plea requires such a certificate. (*People v. Ribero* (1971) 4 Cal.3d 55, 64.)

“Section 1237.5 is designed to preclude ‘frivolous appeals by requiring the defendant to set forth grounds for appeal and, if she does so, by requiring the trial court to rule on the issue of probable cause.’ ” (*In re Brown* (1973) 9 Cal.3d 679, 683, overruled on another ground in *People v. Mendez, supra*, 19 Cal.4th at pp. 1092–1093, 1097–1098.) The failure of the trial court to issue a certificate of probable cause precludes appellate review. Where the trial court has abused its discretion in refusing to issue a certificate of probable cause, such refusal is reviewable by a petition for writ of mandate. (*Ibid.*) O’Campo did not seek a writ of mandate.

³ *People v. Wende* (1979) 25 Cal.3d 436.

Moreover, nothing in the record indicates the trial court abused its discretion. O'Campo's request for a certificate of probable cause states only that she has a "diagnosed medical condition for which she receives SSI. Her mental health condition rendered her plea involuntary" Nothing in this record explains why this would be so. The trial court, after a colloquy with O'Campo on the record, found her plea to be knowing, intelligent and voluntary. O'Campo was represented at the time of the plea by counsel, who concurred in her waiver of rights. She made no motion to withdraw the plea. The only discussion of O'Campo's mental condition occurred at sentencing, when her counsel submitted a letter from the Social Security Administration "just to point out that she does suffer from some type of organic mental disorder. I don't know what that means."⁴ Counsel argued that O'Campo's mental condition contributed to her poor judgment and lack of impulse control, and asked that the condition be taken into consideration by the court when imposing sentence.

O'Campo's notice of appeal also challenges the sentence imposed "or other matters occurring after the plea that do not affect the validity of the plea." We find no arguable issues. The record reflects that O'Campo rejected drug court participation.⁵ Pursuant to her plea bargain, the sentence was "open" (i.e., in the court's discretion) in the event she was rejected from drug court. "Probation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court." (*People v. Pinon* (1973) 35 Cal.App.3d 120, 123.) O'Campo was not statutorily eligible for probation unless the court found this to be an unusual case, due to having two or more prior felony convictions. (§ 1203, subd. (e)(4).) The court declined to find the case unusual. The court noted O'Campo's extensive criminal history, her repeated failures on prior grants of probation, and her resistance to

⁴ The letter is not in the record.

⁵ O'Campo contends that she "declined further participation" in the drug program because she required pain medication for a cyst in her leg. She also told the probation officer that she dropped out of drug court because she "didn't want to be violated anymore" and "[e]very time you slap me in jail for stupid stuff, it pisses me off."

drug treatment. No abuse of the trial court’s “broad discretion” in sentencing is shown. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) No arguable issues are presented as to the fines and penalties imposed, nor as to the custody credits O’Campo received.

DISPOSITION

The judgment is affirmed.

BRUINIERS, J.

WE CONCUR:

JONES, P. J.

NEEDHAM, J.