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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FILOMENO NUNEZ,

Defendant and Appellant.

A145713

(Mendocino County
Super. Ct. No. SCUK-CRCR-
1479422005)

Filomeno Nunez (appellant) appeals from his plea of no contest and the resulting state prison sentence of seven years he received. We note that appellant has obtained a certificate of probable cause, which is required by Penal Code section 1237.5¹ when a defendant seeks to appeal from a judgment entered following a guilty or no contest plea.

Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that appellant has been notified that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of his right personally to file a supplemental brief raising any issues he chooses to bring to this court's attention. No supplemental brief has been filed by appellant personally.

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

Procedural and Material Factual Background of Case

A first amended criminal complaint was filed by the Mendocino County District Attorney's Office on March 23, 2015, charging appellant and three others with first degree robbery (§ 211). As to appellant, the complaint included a special allegation that appellant was armed with a firearm at the time of the robbery, within the meaning of section 12022, subdivision (a)(1). Other counts and sentencing enhancements were alleged against the other three codefendants.

On March 23, 2015, appellant entered into a negotiated plea with the prosecutor memorialized by a written plea form completed, initialed, and signed by appellant. In return for appellant's plea of no contest to the charge and the admission of the special allegation against him in the amended complaint, it was agreed that appellant would be sentenced to no more than a total of seven years in state prison (rather than the maximum of 10 years he faced if found guilty). All fines and monetary penalties were reserved to be later determined. The form advised appellant of all of the rights he was waiving by entering into the plea and the penal consequences of doing so, including that he could face deportation from the United States as a result of the plea. Appellant also acknowledged that he had discussed the plea deal with counsel and that he had no questions concerning it. A Spanish language interpreter stated that the contents of the form had been translated to appellant, and that he understood the terms and what he was signing. The form was also signed by defense counsel, the prosecutor, and the trial judge.

The terms of the negotiated plea, consequences, and advisements were also put on the record in open court that same day. Appellant was assisted by a Spanish interpreter, and defense counsel was present. After again going over the terms of the plea agreement, the court accepted that the plea was knowingly and voluntarily entered. Appellant's counsel also stipulated that there was a factual basis for the plea.

On April 14, 2015, appellant appeared in court after advising the probation department that he wanted to withdraw his plea. New defense counsel was appointed and the matter continued to May 1, 2015.

At the hearing on May 1, new defense counsel explained what he had done to examine and evaluate appellant's request to withdraw his plea. Based on that work counsel concluded that there existed no legal basis to withdraw the plea, that it was not in appellant's interest to withdraw the plea, and that appellant faced a significantly greater prison sentence if he contested the charge and allegation. Counsel indicated that he so advised appellant of his conclusions. The court then denied the motion to withdraw his plea.

Sentencing took place on May 15, 2015, at which time appellant was sentenced to an aggregate state prison term of seven years. A restitution fund fine of \$1,100 was imposed along with other fines and penalties in accordance with law. Victim restitutions were reserved.

A victim restitution hearing was held on May 22, 2015. At that time appellant waived a hearing on the amounts of restitution and stipulated to the amounts to be awarded (\$568, \$396, \$750, and \$1,455, respectively). Total custody credits of 253 days were also awarded at that time.

Conclusions Based Upon Independent Record Review

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal.

We also discern no error in the plea disposition or in sentencing. The sentence appellant received, and the restitution fines, penalties, and conditions imposed were supported by the law and facts. At all times appellant was represented by counsel.

DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.