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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYANT T. WALLACE,

Defendant and Appellant.

A145946

(San Francisco City & County  
Super. Ct. No. SCN223898)

Defendant Bryant Wallace appeals from a judgment entered pursuant to a guilty plea to possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1))<sup>1</sup> and admission of a prior strike (§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)). In accordance with the terms of the negotiated disposition, the trial court sentenced him to the low term of 16 months in state prison on the possession conviction, doubled to 32 months by the prior strike. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment.

(*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.)

Defendant was notified of his right to file a supplemental brief, and he has done so.

Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

Penal Code section 1237.5 generally precludes an appeal from a judgment of conviction after a plea of no contest or guilty unless the defendant has applied for, and

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

the trial court has granted, a certificate of probable cause. There are two exceptions: (1) a challenge to a search and seizure ruling, as to which an appeal is proper under section 1538.5, subdivision (m); and (2) postplea sentencing issues. (*People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) Since defendant's application for a certificate of probable cause was denied, he is not able to challenge the validity of his plea or any other matter that preceded its entry, except as permitted under the exceptions. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868.)

Defendant made a suppression motion. However, before the preliminary hearing was concluded and the motion ruled on, he entered into a negotiated disposition and then made the guilty plea and admission described above. Since there was no ruling on the suppression motion, the merits of the motion are not a matter subject to review on appeal.

The second exception to the requirement for a probable cause statement—postplea sentencing issues—does not encompass defendant's motion to withdraw his plea. This was an attack on the validity of the plea based on alleged circumstances that preceded the plea and, therefore, is within the probable cause statement requirement. (*People v. Johnson* (2009) 47 Cal.4th 668, 679.) In any case, the trial court did not err in its handling of defendant's effort to withdraw from his plea. At sentencing, after complaining the agreed-to sentence was "excessive," defendant raised the issue of making a motion to withdraw his plea. The court appointed conflicts counsel to investigate and continued sentencing. Conflicts counsel did not file a motion, and at the next hearing, the court concluded counsel had found no basis for such. Defendant then asked to represent himself, which the court allowed him to do upon completion of a "*Faretta*"<sup>2</sup> form, and again continued sentencing for three weeks to allow him time to file his own motion to withdraw his plea. At the next hearing, defendant maintained he had not had adequate use of the law library. The court then asked him to state in his own words why he believed he should be able to withdraw his plea. Despite much patient

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<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

examining by the court, defendant never provided an answer, except to complain he had not had enough time to gather his “pro per materials” and to allude to “ineffective counsel.” Defendant continues to assert in his supplemental brief that he had inadequate access to the prison law library, but still fails to explain the basis for why he should have been allowed to withdraw his plea. The court ultimately concluded there was no good cause to further delay sentencing, and duly sentenced defendant in accordance with the terms of the negotiated disposition. While defendant continues to assert in his supplemental brief that the court should have granted another continuance, he fails to make any showing the outcome likely would have been different had the court granted the continuance and he was prejudiced by the court’s refusal to extend sentencing another three weeks.

The court imposed required fees, imposed three-year stay away orders as to the three victims, and properly credited defendant for custody credits.

Defendant also complains in his supplemental brief that his lawyer provided ineffective assistance during the criminal proceedings and the prosecutor committed “misconduct” by failing to procure video surveillance tapes defendant claims “are bound” to exist. These are preplea matters and may not be raised on appeal following a disposition by way of a plea.

#### **DISPOSITION**

After a full review of the record, we find no arguable issues and affirm the judgment.<sup>3</sup>

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<sup>3</sup> Defendant’s request for judicial notice of his own declaration filed in support of his supplemental brief is denied.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.

A145946, *People v. Wallace*