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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL AYALA,

Defendant and Appellant.

B237250

(Los Angeles County
Super. Ct. No. KA091626)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bruce F. Marris, Judge. Affirmed.

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Miguel Ayala appeals from a judgment following his guilty plea to second degree murder (Pen. Code, § 187, subd. (a))¹ and admission that he personally and intentionally discharged a firearm (§ 12022.53, subd. (c)). We affirm.

PROCEDURAL BACKGROUND

On November 4, 2010, the District Attorney of Los Angeles County filed an information charging defendant with murder.² (§ 187, subd. (a).) The information alleged that defendant personally and intentionally discharged a firearm causing great bodily injury and death (§ 12022.53, subd. (d)), personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and personally used a firearm (§ 12022.53, subd. (b)). The information further alleged that a principal personally and intentionally discharged a firearm causing great bodily injury and death (§ 12022.53, subs. (d) and (e)(1)), personally and intentionally discharged a firearm (§ 12022.53, subs. (c) and (e)(1)), and personally used a firearm (§ 12022.53, subd. (b) and (e)(1)). The information also alleged that the murder was committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members. (§ 186.22, subd. (b)(1)(C).)

On August 30, 2011, defendant entered into a plea agreement pursuant to which he pleaded guilty to second degree murder (§ 187, subd. (a)), admitted that he personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and received a sentence of 35 years to life in state prison. On the People's motion, the remaining allegations against defendant were dismissed.

¹ All statutory citations are to the Penal Code unless otherwise noted.

² The information also charged Jose Alfredo Rojas Martinez and Vincent Lopez with murder and alleged certain sentence enhancements with respect to Martinez and Lopez. Martinez and Lopez are not parties to this appeal.

Defendant filed a notice of appeal that included a request for a certificate of probable cause. In his request for a certificate of probable cause, defendant stated that his attorney misinformed him “in taking a thirty five years to life sentence and also said by taking this deal [he] would be eligible [*sic*] to go up for parol [*sic*] in the next seven years.” Defendant stated that he agreed to the plea agreement based on that misinformation. If his attorney had properly explained that he would have to serve 35 years before being eligible for parole, defendant would not have accepted the plea agreement. Defendant stated that the trial court also advised him “during the plea bargain” that he would be eligible for parole in seven years. Defendant also stated, “I was not properly informed of all my rights and violated of my rights by not fileing [*sic*] motions requested to the court.” The trial court denied defendant’s request for a certificate of probable cause.

We appointed counsel to represent defendant in this appeal. After examining the record, counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting this court to conduct an independent review of the record to determine if there are any arguable issues. On March 22, 2012, we gave notice to defendant that counsel had failed to find any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Defendant did not submit a brief or letter.

DISCUSSION

“In the case of a judgment of conviction following a plea of guilty or no contest, section 1237.5 authorizes an appeal only as to a particular category of issues and requires that additional procedural steps be taken. That statute provides: ‘No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

[¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.” (*In re Chavez* (2003) 30 Cal.4th 643, 650.)

Defendant failed to obtain a certificate of probable cause with respect to his claims that he was misinformed in connection with the entry of his guilty plea, that he “was not properly informed of all [his] rights and violated of [his] rights by not filing [sic] motions requested to the court” as required by section 1237.5 and California Rules of Court, rule 8.304(b) (rule 8.304(b)³). Because defendant did not obtain a certificate of

³ Rule 8.304(b), “**Appeal after plea of guilty or nolo contendere or after admission of probation violation,**” provides:

“(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court with the notice of appeal required by (a)—the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

“(2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

“(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal ‘Inoperative,’ notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.

“(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:

“(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or

“(B) Grounds that arose after entry of the plea and do not affect the plea’s validity.

“(5) If the defendant’s notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).”

probable cause, his appeal is “inoperative” as to those claims. (*People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)⁴

By defendant’s failure to obtain a certificate of probable cause, our independent review of the record is limited by rule 8.304(b) to the denial of a motion to suppress under section 1538.5 or grounds that arose after entry of the plea that do not affect the plea. In his form notice of appeal, defendant checked the box that states that his appeal is based on his sentence or other matters occurring after the plea that do not affect the validity of the plea. A defendant may not challenge the sentence that he agreed to accept as part of a plea agreement without first obtaining a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 79 [“[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself. Therefore it was incumbent upon defendant to seek and obtain a probable cause certificate in order to attack the sentence on appeal”].) Accordingly, our independent review is limited to matters occurring after defendant entered his plea—not including his sentence—that do not affect the validity of his plea. Consistent with this scope of review, we have examined the record and are satisfied that defendant’s counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

⁴ Defendant did not challenge the denial of his request for a certificate of probable cause through a writ of mandate. (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188 [the denial of a certificate of probable cause must be reviewed by a writ of mandate].)

DISPOSITION

The judgment is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.