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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONSO AYALA,

Defendant and Appellant.

B238806

(Los Angeles County
Super. Ct. No. TA119932)

THE COURT:*

Alfonso Ayala (defendant) appeals from the judgment entered following his plea of guilty to one count of attempted second degree robbery in violation of Penal Code sections 211 and 664¹ and a plea of no contest to one count of dissuading a witness by force or threat in violation of section 136.1, subdivision (c)(1). Defendant admitted personal use of a firearm in the commission of count 1 within the meaning of section 12022.53, subdivision (b), and he admitted the truth of the gang allegation pursuant to section 186.22, subdivision (b)(1)(C).

* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

Pursuant to a plea agreement, the trial court sentenced defendant to 12 years in state prison. The sentence consisted of the midterm of two years in count 1 and an additional 10 years for the firearm-use enhancement. The trial court stayed punishment for the gang enhancement. The trial court imposed a concurrent sentence of one-third the midterm (one year) in count 2. The trial court ordered a restitution fine of \$200, a parole revocation fine of \$200, a court security fee of \$30, and a court construction fee of \$40. The trial court granted defendant 93 actual days of credit and 14 conduct credit days for a total of 107 days.

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an "Opening Brief" containing an acknowledgment that he had been unable to find any arguable issues. On May 18, 2012, we advised defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

At defendant's preliminary hearing, Saul Lopez testified that on the evening of September 11, 2011, he was about to enter his front door when he saw defendant pass by with a gym bag. Defendant began verbally abusing Lopez. Defendant then pulled a sawed-off shotgun from the gym bag and told Lopez, "Give me your fucken chain," referring to the chain Lopez wore around his neck. Defendant pointed the shotgun at Lopez's face. Lopez was very afraid and did not know what to do. Defendant suddenly left. After a minute, defendant returned and told Lopez, "Watch. If you snitch me, I'm gonna fucken get you. It is my hood." Lopez was scared, but he reported the incident to the police the next day. Defendant lived four houses away from Lopez, and Lopez had seen defendant associating with the Compton Varrio Segundo (CVS) gang. A gang expert testified that he knew defendant and that defendant was an admitted active member of the CVS gang. The expert cited several reasons for his opinion that the crime was for the benefit of the gang.

On January 20, 2012, defendant filed a notice of appeal in which he indicated that the appeal was based on the sentence or other matters occurring after the plea, on the denial of a motion to suppress evidence, on a challenge to the validity of the plea, and on

other bases. In his request for a certificate of probable cause, defendant asserted that his rights were violated during sentencing and that he did not know what was going on. He also felt his sentence was unfair, and the fact that he did not have an adult record was not considered. He said he was pressured to take the deal. The trial court denied the request for a certificate of probable cause.

As appellate counsel acknowledges, given that defendant failed to obtain a certificate of probable cause, his appeal lies only with respect to any sentencing error or post-plea matters that do not affect the validity of the plea.² (§ 1237.5; Cal. Rules of Court, rule 8.304(b).) The record of the taking of the plea shows that defendant pleaded as indicated in exchange for his agreed-upon sentence of 12 years and that the plea was made knowingly, intelligently, and voluntarily. Defendant chose the offer that gave him a 12-year sentence with two strikes over an offer of 17 years with one strike.

We have examined the entire record, including the transcript of the hearing on defendant's *Marsden* motion,³ and we are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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² Although defendant checked the box indicating that his appeal was partly based on the denial of a motion to suppress evidence under section 1538.5, defendant never filed such a motion.

³ *People v. Marsden* (1970) 2 Cal.3d 118.