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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC WAYNE BROWNE,

Defendant and Appellant.

B240761

(Los Angeles County
Super. Ct. Nos. GA070792,
GA084170)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Candace J. Beason, Judge. Affirmed.

Eric Wayne Browne, in pro. per.; Jonathan B. Steiner and Richard B. Lennon,
under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Case No. GA070792

On August 30, 2007, by felony complaint, defendant was charged with one count of second degree commercial burglary in violation of Penal Code¹ section 459 arising out of the burglary of a T.J. Maxx store, and one count of petty theft with prior convictions pursuant to section 666. The complaint further alleged three prior convictions for which defendant served two prison terms pursuant to section 667.5.

On January 9, 2008, pursuant to a waiver of his trial rights, defendant entered a plea of guilty and admitted his prior prison terms. His sentence was suspended and he was placed on probation, with one of the terms being that he complete a one-year live in treatment program.

At the hearing, defendant requested return of his personal property that had been taken upon his arrest and was advised that he needed to go to the sheriff's station and fill out a form; the property could be released to defendant's wife. The court advised defendant that if there were any problems, he should call the sheriff's department.

Case No. GA084170

On September 2, 2011, defendant entered the Rite Aide store in South Pasadena at approximately 10:00 a.m., holding what appeared to be an empty recyclable red bag. A store clerk greeted defendant as he walked in. The clerk advised other store employees to follow defendant; meanwhile, the clerk who greeted defendant continued to observe him. She saw defendant go to the vitamin aisle, pick up some large cans of protein and place them inside the red bag. Defendant went to the cash register, but only paid for one item, a pack of paper towels. After paying, defendant went toward the exit. The clerk asked for the protein can back, but defendant refused to give it back, and a struggle ensued. The clerk attempted to grab the bag. Another clerk came over and got the bag from defendant. The bag also contained a bottle of champagne.

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

On November 3, 2011, defendant was charged in a two-count information with one count of second degree robbery (§ 211) and one count of petty theft with three priors (§ 666, subd. (a)). The information further alleged five prior convictions resulting in a prison term pursuant to section 667.5.

On October 20, 2011, the court held defendant to answer for the charges, and found defendant in violation of his probation for case no. GA070792.

On December 5, and 21, 2011, defendant moved to discover photos of the crime scene and to have records of the store's communication with its loss prevention company, and sought discovery of exculpatory evidence. On January 24, 2012, defendant sought further disclosure of exculpatory evidence and information concerning his prior convictions. On February 2, 2012, defendant moved for return of his property as *Brady*² evidence, seeking the return of his personal property that was held upon his arrest and contending it was exculpatory evidence, such as receipts for items.

On February 21, 2012, defendant pleaded nolo contendere to the charges after waiving his right to a trial by jury, the right to confront and examine witnesses, subpoena power of witnesses, and his right against self-incrimination, and being advised of the consequences of his plea. The court denied probation, and sentenced defendant to the low term of two years in state prison on count 1, and gave defendant credit for 261 days in custody (174 days in actual custody and 87 days good time/work time); the court calculated that defendant's custody credits of 358 days equaled time served on his sentence in case no. GA070792. The sentences were ordered to run concurrently with defendant's sentence in case no. LA068326.

On March 21, 2012, defendant filed a petition for writ of habeas corpus, which was summarily denied on April 13, 2012.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to

² *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215].

independently review the record. On August 14, 2012, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. On September 17, 2012, defendant filed a handwritten letter brief in which he states that the prosecution failed to disclose exculpatory evidence under *Brady v. Maryland*, *supra*, 373 U.S. 83; he was unable to obtain investigative assistance to uncover evidence or a use-of-force expert; and his personal property, taken when he was arrested, was not returned to him.³ Although these claims do not present arguable issues, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 120–121, we explain the reasons they fail.

First, a defendant who pleads guilty or nolo contendere is required to request and obtain a certificate of probable cause from the superior court to challenge the validity of his plea. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) Absent a certificate of probable cause, a defendant may appeal from a plea of guilty on non-certificate grounds if the notice of appeal states that the appeal is based on “[t]he denial of a motion to suppress evidence under . . . section 1538.5” (Cal. Rules of Court, rule 8.304(b)(4)(A)) or is on “[g]rounds that arose after entry of the plea and do not affect the plea’s validity” (Cal. Rules of Court, rule 8.304(b)(4)(B); see *People v. Mendez*, *supra*, 19 Cal.4th at p. 1096, citing former Cal. Rules of Court, rule 31(d), now, in pertinent part, rule 8.304(b)(4).)

Thus, to the extent defendant challenges the failure to disclose exculpatory evidence, his inability to uncover evidence at trial, or procure a use of force expert, these are issues that arose preplea and are barred on appeal by the trial court’s denial of his certificate of probable cause. To the extent defendant claims that the district attorney or the Los Angeles Police Department lost his personal property or failed to return it after

³ Defendant filed the same letter brief in this appeal as he did in appeal no. B240820, raising the same issues.

promising to do so as part of his plea agreement. The proper procedure for him is to file a claim with those entities or a petition for a writ of habeas corpus or both.

We have examined the entire record and are satisfied that defendant's attorneys have fully complied with their responsibilities and that no arguable issues exist. (*People v. Kelly, supra*, 40 Cal.4th at pp. 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.