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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.

KENNETH PATTERSON,

Defendant and Appellant.

B242258

(Los Angeles County
Super. Ct. No. TA119659)

THE COURT: *

Defendant Kenneth Patterson appeals from the judgment entered following his plea of “no contest” to two counts of assault with a firearm (Pen. Code, § 245, subd. (a)(2))¹ (counts 1 & 4). With respect to both counts, defendant admitted that he personally used a firearm in the commission of the crime under section 12022.5, subdivision (a). With respect to count 1, defendant admitted that the crime was committed for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b).

* BOREN, P.J. DOI TODD, J. CHAVEZ, J.

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

Pursuant to the agreed-upon disposition, the trial court sentenced defendant to a total prison sentence of 20 years. In count 1, the trial court imposed the midterm of three years plus a consecutive 10 years for the firearm allegation and a consecutive five years for the gang allegation, resulting in a sentence of 18 years for that count. In count 4, the trial court imposed a consecutive sentence of one year (one-third the midterm) for the assault and a consecutive one year (one-third the low term) for the gun allegation. The trial court granted the People's motion to dismiss the remaining counts and allegations, i.e., shooting at an inhabited dwelling (§ 246) (count 2); attempted willful, deliberate, and premeditated murder (§§ 664/187, subd. (a)) (count 3); an allegation of personal discharge of a firearm in the attempted murder count (§ 12022.53, subd. (c)); and all of the gang allegations accompanying these counts.

Because defendant entered a plea before trial, the facts are summarized from the transcript of his preliminary hearing. Edward Robinson and a friend were conversing on the street when defendant approached them and gave them "looks." Robinson's friend asked "Why are you looking at us so hard?" Defendant said, "This is my neighborhood. This is my hood." Robinson asked what he meant, and defendant replied, "This is eleven-six Kitchen Crip." Robinson believed this was a gang. Robinson said, "Well, so what?" Defendant then pulled a gun from his waistband and pointed it at Robinson's chest.

On the following day, Robinson was standing on his porch when he saw defendant drive by. A short time later defendant returned and drove by again. He then made a U-turn, drove back, and shot twice at Robinson's house. Robinson had gone inside and locked the door, but he was watching from inside the house. One bullet went through the window of his mother's room and one went through the metal door and hit the wooden door. Police officers later took Robinson to a field showup where he identified defendant.

Detective Armando Orellana testified that the shooting took place in the center of the Kitchen Crips gang territory. A notebook was found at defendant's grandfather's house, and it contained Kitchen Crips gang writings and symbols. Detective Orellana

believed defendant was a member of Kitchen Crips and that defendant's crime was committed for the benefit of the gang.

During the course of voir dire at defendant's trial, the trial court announced that a disposition had been reached whereby defendant would plead "no contest" to some of the charges in exchange for an agreed-upon disposition of 20 years. The People amended the information to add a second count of assault with a firearm, and the prosecutor read the charges to defendant, explaining that his maximum sentence on all charges, should he be convicted at trial, was life in prison. The prosecutor explained the terms of the bargain, and defendant said he understood. The prosecutor read defendant his constitutional rights, which defendant said he understood, and which he waived and gave up. The prosecutor explained the consequences of defendant's plea, including the fact that he now had two strike offenses. Defendant then entered his plea. The trial court found that the plea was knowingly, intelligently, and voluntarily made, and that there was a factual basis for the plea and admissions.

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 October 22, 2012, we advised defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider.

On December 4, 2012, defendant filed a supplemental brief in which he argues that he was "the victim of ineffective assistance of counsel twice." His first attorney was ill when he took the case, and his condition and actions jeopardized defendant's case. After defendant fired his first attorney, his second attorney was unprepared and did not know how to proceed due to lack of time caused by the first attorney's negligence. His second attorney advised defendant to accept a settlement that was in favor of the prosecution and against defendant's best interest.

The record shows that defendant did not obtain a certificate of probable cause. He filed a notice of appeal and later an amended notice of appeal in which he indicated that

his appeal was based on the sentence or other matters occurring after the plea that do not affect the validity of the plea.

“A defendant may not appeal ‘from a judgment of conviction upon a plea of guilty or nolo contendere,’ unless he has obtained a certificate of probable cause. [Citations.] Exempt from this certificate requirement are postplea claims, including sentencing issues, that do not challenge the validity of the plea. [Citations.]” (*People v. Cuevas* (2008) 44 Cal.4th 374, 379; see also *People v. Mendez* (1999) 19 Cal.4th 1084, 1095-1096.) An appeal based on ineffective assistance of counsel following a no contest plea requires a certificate of probable cause (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b); see *In re Chavez* (2003) 30 Cal.4th 643, 651.) Because defendant did not obtain a certificate of probable cause, the appeal is “nonoperative” as to any such claim. (*People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) The certificate requirements of section 1237.5 “should be applied in a strict manner.”² (*Mendez, supra*, 19 Cal.4th at p. 1098.) Defendant has not identified any issue that is exempt from the requirement of a certificate of probable cause following a no contest plea.

In addition, any issues that relate to his sentencing in accordance with the plea bargain to which he agreed may not be raised on appeal. In *People v. Panizzon* (1996) 13 Cal.4th 68 (*Panizzon*), the Supreme Court held that where a defendant is sentenced in accordance with the terms of a plea bargain that provides for a particular sentence, and then attempts to challenge that sentence on appeal, he must secure a certificate of probable cause. The court explained that since the defendant is “in fact challenging the very sentence to which he agreed as part of the plea,” the challenge “attacks an integral

² Section 1237.5 provides as follows: “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.”

part of the plea[and] is, in substance, a challenge to the validity of the plea, which requires compliance with the probable cause certificate requirements of section 1237.5 and [former] rule 31(d).”³ (*Panizzon, supra*, 13 Cal.4th at p. 73; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) The *Panizzon* court held that the Court of Appeal erred in denying the People’s request for a dismissal. (*Panizzon, supra*, at p. 73.)

In the absence of a certificate of probable cause, we must dismiss defendant’s appeal. We have examined the entire record and 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.)

DISPOSITION

The appeal is dismissed.

³ Former rule 31 (d) is now California Rules of Court, rule 8.304(b).