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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC DABNEY,

Defendant and Appellant.

2d Crim. No. B255377
(Super. Ct. No. BA418502)
(Los Angeles County)

Eric Dabney appeals the judgment entered following his no contest plea to making criminal threats (Pen. Code,¹ § 422, subd. (a)), and his admission of a prior strike conviction (§§ 667, subds. (b) - (i), 1170.12, subds. (a) - (d)). Pursuant to a negotiated disposition, the trial court sentenced appellant to nine years in state prison, consisting of the midterm of two years doubled for the strike prior, plus a five-year enhancement pursuant to section 667, subdivision (a)(1). In exchange for appellant's plea, an additional charge of making criminal threats, allegations of three additional strikes, and a gang enhancement allegation (§ 186.22, subd. (b)) were dismissed.

Because appellant pled no contest prior to trial, the relevant facts are derived from the preliminary hearing transcript. Appellant went to his ex-girlfriend Jackie J.'s apartment to retrieve some of his clothing. Appellant was refused entry and

¹ All further statutory references are to the Penal Code.

became agitated. Jackie's son joined her at the door and asked appellant to leave. Appellant told Jackie she had better move because he was going to shoot up the apartment. He then picked up a brick and threw it at the door. Jackie was placed in fear as a result of appellant's threat and called the police.

Several weeks after appellant was sentenced in accordance with his plea agreement, he moved in propria persona for modification of his sentence pursuant to subdivision (d) of section 1170. Appellant asked the court to appoint counsel, hold a *Romero*² hearing, and strike the gang enhancement allegation for insufficient evidence. The court denied the motion, reasoning that "[appellant] entered a plea and admission which resulted in a 9 [year] term. There are no grounds on which to modify [his] sentence."

Appellant filed a timely notice of appeal that purports to challenge his sentence or other post-plea matters that do not affect the validity of his plea. He did not seek or obtain a certificate of probable cause.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On June 30, 2014, we advised appellant in writing that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. In a timely response, appellant contends that trial counsel provided ineffective assistance by failing to argue for a lesser sentence. He claims counsel should have sought dismissal of the strike priors due to their remoteness and highlighted mitigating factors demonstrating that he "is the type of offender that falls outside of the spirit and intent of the Strikes Law."

Appellant's ineffective assistance of counsel claim is not cognizable on direct appeal. He entered a negotiated plea bargain and was sentenced in accordance with that bargain. His claim that trial counsel provided ineffective assistance prior to his

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504.

plea ultimately attacks the validity of that plea. Accordingly, the claim cannot be raised on direct appeal absent a certificate of probable cause. (*In re Chavez* (2003) 30 Cal.4th 643, 649-651; *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) Appellant did not obtain a certificate of probable cause. In any event, he fails to meet his burden of establishing that trial counsel was ineffective. (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1058.)

We have examined the record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Norm Shapiro, Judge
Superior Court County of Los Angeles

California Appellate Project, Jonathan B. Steiner, Suzan E. Hier, under appointment by the Court of Appeal; Eric Dabney, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.