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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.

GEORGE TODD,

Defendant and Appellant.

B256939

(Los Angeles County Super. Ct.  
No. NA094829)

APPEAL from a judgment of the Superior Court of Los Angeles County, Tomson T. Ong, Judge. Affirmed.

Miriam K. Billington, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant and appellant George Todd entered into a case settlement with the prosecution for an agreed-upon sentence of nine years in state prison. Pursuant to the agreement, defendant plead no contest to sale of cocaine base. (Health & Saf. Code, § 11352.) Defendant admitted suffering a 1991 prior conviction for robbery, which qualified as a strike under the three strikes law. (Pen. Code, §§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i).) Finally, defendant admitted a prior conviction for sale of a controlled substance. (Health & Saf. Code, § 11370.2.) The trial court imposed the nine-year sentence envisioned by the case settlement.

Without obtaining a certificate of probable cause (Pen. Code, § 137.5), defendant filed a notice of appeal indicating the appeal (1) is based on the sentence or other matters occurring after the plea that do not affect the plea's validity, and (2) challenges the validity of the plea or admission. This court appointed counsel to represent defendant on appeal. Appointed counsel filed a brief raising no issues, but requested this court to independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised by letter from this court of his right to file a supplemental brief within 30 days.

Defendant filed a supplemental letter brief with this court, raising the following issues: (1) he was denied a hearing on his strike prior conviction, which occurred 22 years ago, and it is cruel and unusual to punish him after he already served time for that offense; (2) trial counsel provided constitutionally inadequate representation, because he failed to show defendant a recording of the sale of cocaine base, and if he had, defendant would have settled his case for a lesser charge; (3) he did not plead guilty to a violation of Health and Safety Code section 11352 on May 29, 2013; (4) counsel at the preliminary hearing lied to defendant by telling him she could win his case; and (5) defendant would like a reduced sentence.

We have completed our independent review of the record, and find no arguable appellate contentions. According to the preliminary hearing transcript, defendant sold cocaine base to a police assistant. The undercover funds used to buy the cocaine base

were recovered from defendant, as was additional cocaine base. Defendant, who has an extensive criminal record, failed to appear at trial, resulting in the forfeiture of his bail. Defendant had been offered a six-year prison term prior to his failure to appear, but the offer was increased to nine years after defendant was arrested on the bench warrant. Defendant accepted the nine-year offer after being fully advised of the consequences of his plea and his constitutional rights. The trial court imposed the exact sentence bargained for by defendant.

None of defendant's contentions in his letter brief have merit. Defendant was not denied a hearing regarding his strike prior conviction. His prior attorney had prepared a motion to dismiss the strike, but defendant failed to pay counsel and she was relieved before the motion could be heard. Defendant retained new counsel, but by failing to appear for trial, defendant negated any possibility of seeking to dismiss a strike. Moreover, given defendant's persistent criminality, there is no possibility the trial court would have granted a motion to dismiss the strike prior conviction, as defendant is clearly within the spirit of the three strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 160-161.)

Defendant's conclusory claims of ineffective assistance of counsel are not borne out by the record on appeal. Defendant's claims can only be addressed in a habeas corpus petition "because they require investigation of evidence outside the record in order to potentially establish prejudice." (*People v. Williams* (2013) 56 Cal.4th 630, 691.) Defendant's claim that he did not plead guilty on May 29, 2013, is unfocused. It is not alleged or suggested in the record that defendant entered a guilty plea on that date in this or any other case. Finally, this court has no authority to order a reduced sentence for defendant. Defendant received the sentence he bargained for, which reduced his prison exposure from seventeen years to nine years.

The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

GOODMAN, J. \*

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\* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.