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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.

KENNETH LEE COX,

Defendant and Appellant.

2d Crim. No. B271098  
(Super. Ct. No. 2016000494)  
(Ventura County)

Kenneth Lee Cox appeals a judgment of conviction and 14-year prison sentence following a guilty plea to second degree robbery. (Pen. Code, § 211.)<sup>1</sup>

We appointed counsel to represent Cox in this appeal. After counsel's examination of the record, he filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We advised Cox that he had 30 days within which to personally submit any contentions or issues he wished us to consider. Cox

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<sup>1</sup> All further statutory references are to the Penal Code.

filed a letter brief setting forth several issues for the court's review. We affirm.

### BACKGROUND

The People charged Cox and two codefendants with one count each of second degree robbery and active participation in a criminal street gang. (§§ 211, 186.22, subd. (a).) The People also alleged the robbery was committed for the benefit of a street gang, and that Cox had a prior strike conviction. (§§ 186.22, subd. (b)(1)(C), 667, subd. (e)(1), 1170.12, subd. (c)(1).)

At his arraignment, Cox invoked his right to a speedy trial, waived his right to counsel, and pled not guilty to all charges. After the court advised him about the disadvantages of not having counsel, Cox stated he understood and still wanted to represent himself. He requested a copy of the complaint and indicated that he knew his rights to confront his accusers, subpoena witnesses, and have a jury trial. At his bail review hearing, he repeated his desire to represent himself despite the court's warning that he was "making a big mistake."

During the preliminary hearing, Cox advised the court that he wished to change his plea to guilty. The court expressed its "strong concerns" about his self-representation, and suggested that he obtain counsel before deciding to change his plea.

Cox informed the court that he committed the crime and was pleading guilty to "tak[e] responsibility for [his] actions." The court again advised Cox of the disadvantages of self-representation, had him complete a new waiver form, and granted his request to represent himself. The court also made a finding that Cox was competent and understood his rights. Cox completed a written plea form, orally pled guilty to the robbery

charge, and admitted the gang and strike allegations.<sup>2</sup> On the plea form, Cox initialed the paragraph stating that his plea was not the result of threats or coercion.

At the sentencing hearing, Cox submitted a letter stating he was innocent of the charged crimes, was not a gang member, and only pled guilty because he was afraid of reprisal by gang members if he did not “take the fall.” The court gave Cox the opportunity to obtain counsel and bring a motion to withdraw his guilty plea. Cox declined, and stated he wished to go forward with sentencing.

#### DISCUSSION

On appeal, Cox contends (1) he did not commit the crimes with which he was charged; (2) he pled guilty out of fear of gang reprisal; and (3) he was delusional, “suffering from paranoia,” and under the influence of an antipsychotic tranquilizer during the proceedings.

Cox’s first and second contentions are foreclosed by section 1237.5, which prohibits appeal following a guilty plea unless (1) the defendant files with the trial court a written, sworn statement “showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings” (*id.*, subd. (a)); and (2) the trial court executes and files “a certificate of probable cause for such appeal with the clerk of the court” (*id.*, subd. (b)). A defendant must comply with section 1237.5 before challenging the validity of a guilty plea on appeal. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1095.)

The record does not reflect compliance with section 1237.5. Cox’s sworn statement does not state any grounds for the

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<sup>2</sup> The court dismissed count 1, alleging that Cox was an active member of a street gang (§ 186.22, subd. (a)).

appeal, as required by subdivision (a). And the record does not include a certificate of probable cause, as required by subdivision (b).

Cox's third contention suggests that he lacked competence. A defendant is incompetent when he is unable to understand the nature of the criminal proceedings or to assist counsel in a rational manner in the defense. (*People v. Avila* (2004) 117 Cal.App.4th 771, 777.) The trial court is required to conduct a hearing pursuant to section 1368 to determine competency when substantial evidence of incompetence arises. (*Id.* at pp. 777-778.) We give great deference to a trial court's decision whether to hold a competency hearing. (*Id.* at p. 778.)

There is no substantial evidence that Cox lacked competence. Cox demonstrated that he understood the nature of the proceedings, knew his rights, and knew how to assert them. He rationally responded to the court's questions and understood the consequences of waiving counsel and pleading guilty. The court was justified in finding that Cox understood the nature of the proceedings and was able to assist in a rational manner in his defense.

We have reviewed Cox's remaining contentions and conclude that they are not relevant to the question of whether the trial court committed error. There was no error.

DISPOSITION

We have reviewed the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 443.)

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Teresa Estrada-Mullaney, Judge

Superior Court County of Ventura

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Richard B. Lennon, under appointment by the Court  
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.