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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLEN FREDERICK ANDERSEN,

Defendant and Appellant.

C068617

(Super. Ct. No. CM033397)

On December 5, 2010, 72-year-old defendant Allen Frederick Andersen went to a restaurant in Chico wearing a ski mask and carrying a gun. He encountered an employee near a dumpster in front of the building. Defendant pointed the gun at the employee, and ordered him to go back into the restaurant. Defendant entered the building, pointed the gun at two employees, and ordered them to "walk toward the money." As they began to walk, defendant was contacted by another employee, James Hyatt. After defendant pointed his gun at Hyatt and said, "Give me the money," Hyatt grabbed defendant's gun and pushed it

away. The gun fired during the ensuing struggle, superficially wounding one of the other employees.

Defendant was subdued by the employees. Police searched him and found several large plastic zip ties fashioned for use as handcuffs, two blue rubber gloves, and a small flashlight.

Defendant pleaded no contest to attempted second degree robbery (Pen. Code, § 211) and admitted an allegation that he personally used a firearm (*id.*, § 12022.53, subd. (b)). The trial court sentenced defendant to 11 years four months in state prison, imposed various fines and fees, and awarded 172 days of presentence credit (150 actual and 22 conduct). (*Id.*, § 2933.1.)

Defendant appeals. He did not obtain a certificate of probable cause. (Pen. Code, § 1237.5.)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief raising three issues. Defendant contends: (1) trial counsel was ineffective by representing "many other cases" without disclosing this to defendant; (2) trial counsel was ineffective also by

inadequately preparing for the case; and (3) the trial court erred in accepting his plea bargain in this serious felony case.

As a result of trial counsel's alleged deficiencies, defendant asks us to vacate his plea.

When a defendant challenges the validity of his plea due to ineffective assistance of counsel, he must obtain a certificate of probable cause in order to raise the issue on appeal. (*In re Chavez* (2003) 30 Cal.4th 643, 649-651; *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) Since defendant did not obtain a certificate of probable cause, his claims of ineffective assistance of counsel are not cognizable on appeal. In addition, since there is nothing in the record supporting his claims, defendant has failed to meet his burden of establishing that trial counsel was ineffective. (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1058.)

On his third point, defendant contends the trial court could not properly accept his plea bargain because Penal Code section 1192.7, subdivision (a) prohibits plea bargaining in cases involving serious felonies. Like defendant's ineffective assistance of counsel claims, defendant's challenge to the validity of the plea is not cognizable on appeal because he failed to obtain a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76.) Even if it were properly before us, we would reject it for the reasons stated by this court in *People v. Webb* (1986) 186 Cal.App.3d 401, 410-411.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

_____ BUTZ _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MAURO _____, J.