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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

DOMENICK LACURT BRYANT,

Defendant and Appellant.

C068752

(Super. Ct. No. 62-
093490A)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. Defendant filed a supplemental brief raising the following issues: (1) he should be permitted to withdraw his plea because did not understand that he was waiving any Penal Code section 654¹ issues regarding the length of his sentence because he has limited mental capabilities, was under the

¹ Further undesignated statutory references are to the Penal Code.

influence of his psychological medications, and his attorney did not explain the waiver to him; (2) he did not commit the offenses of which he was convicted; (3) his sentence is disproportionate to that of his cohorts; and (4) the prosecution did not prove his prior convictions. We address the issues raised in defendant's brief, in addition to undertaking a review of the record as required by *Wende*, and affirm the judgment.

On September 8, 2009, defendant Domenick Lacurt Bryant went into a Bel Air store and purchased pseudoephedrine tablets. He purchased them with the intent to sell the tablets to another individual. He was engaging in this activity with several other individuals.

Defendant was charged with possession of precursors for manufacture of methamphetamine with intent to sell (Health & Saf. Code, § 11383.7, subd. (b)(1)), commercial burglary (§ 459), and conspiracy to commit the offense of possession of precursors for manufacture of methamphetamine with intent to sell (§ 182, subd. (a)(1)). It was also alleged that defendant had three prior serious or violent felony convictions ("strikes") (§ 1170.12) and had served four prior prison terms (§ 667.5, subd. (b)). An infraction for driving an unregistered vehicle was also included in the information.

Plea negotiations occurred throughout the course of the proceedings. Pursuant to Evidence Code section 1017, defendant was evaluated on February 11, 2010, by Dr. Roeder, and on September 29, 2010, by Dr. Schmidt. Also during the course of

the proceedings, defendant made and the court denied four *Marsden* motions.²

On June 21, 2011, defendant entered into a negotiated plea wherein he pled no contest to possession of precursors for manufacture of methamphetamine with intent to sell (Health & Saf. Code, § 11383.7, subd. (b)(1)), commercial burglary (§ 459), and conspiracy to commit the offense of possession of precursors for manufacture of methamphetamine with intent to sell (§ 182, subd. (a)(1)) as charged in the information.³ Defendant also admitted he had sustained a prior strike and had served three prior prison terms. In exchange for his plea, it was agreed he would receive the stipulated term of 11 years 8 months and would waive any section 654 issues.

On June 29, 2011, defendant was sentenced to 11 years 8 months in accordance with the plea agreement, as follows: the upper term of three years, doubled for the strike, for possession of precursors for manufacture of methamphetamine with intent to sell; eight months, doubled for the strike, for commercial burglary; eight months, doubled for the strike, for conspiracy to commit the offense of possession of precursors for manufacture of methamphetamine with intent to sell; and one year

² *People v. Marsden* (1970) 2 Cal.3d 118.

³ The record reflects that defendant entered what was referred to as a "West" plea of no contest. *People v. West* (1970) 3 Cal.3d 595, is sometimes cited for the proposition that a defendant may plead guilty, for valid tactical reasons, to a crime that the defendant feels he or she did not commit.

for each of the three prior prison terms. Defendant was ordered to pay a \$500 restitution fine, a stayed \$500 parole revocation fine, three \$30 criminal conviction assessment fees, and a \$40 court security fee. Defendant was awarded 660 actual days and 330 conduct days for a total of 990 days of custody credit.

Defendant appeals. His request for a certificate of probable cause was granted. (§ 1237.5.)

Defendant argues that he should be permitted to withdraw his plea. He contends that he did not understand that he was waiving any section 654 arguments as they related to the length of his sentence because he has limited mental capabilities, he was under the influence of his psychological medication at the time he entered the plea, and his attorney failed to explain it to him. Defendant also contests his guilt regarding the current offenses.

Defendant waived any claims related to his guilt or innocence by accepting the plea bargain. "He knowingly gave up [any] defense in order to take advantage of a plea bargain." (*People v. Marlin* (2004) 124 Cal.App.4th 559, 566-567.) He presents no arguable issue as to the voluntariness of his plea.

Faced with a potential for imprisonment of 28 years to life,⁴ defendant entered into an agreement with the prosecution to waive his right to a jury trial in exchange for a stipulated

⁴ One of the prior prison term allegations did not qualify as a separate prison commitment.

11-year 8-month determinate term. That stipulated term necessarily involved a waiver of any section 654 irregularities. Furthermore, the trial court expressly clarified with defendant that he understood that he was waiving any section 654 issues and defendant expressly stated that he understood. Defense counsel expressly represented to the trial court that he explained the section 654 waiver to defendant "several times."

In addition to initialing and signing a written plea agreement which recited the terms of the agreement, defendant expressly stated in court that he understood it was a stipulated plea of 11 years 8 months. He informed the court that he was taking his psychological medication but assured the court that he understood the agreement. A recent report by Dr. Schmidt concluded that "if [defendant] decides to accept a plea bargain, that he possess the capability to understand what that would mean as long as the specifics are explained to him in simple, concrete terms" and the court found defendant competent and that he was understanding the proceedings.

Thereafter, trial court found defendant's waiver was knowing, intelligent and voluntary, and found a factual basis existed for the plea. We find no error.

With respect to defendant's contention that his sentence is disproportionate to that of his cohorts, we merely point out that, not only was defendant sentenced as a recidivist, but he agreed to the stipulated term. Having done so, he cannot now complain about length of his sentence, even if he believes it is disproportionate to that of his cohorts.

Finally, defendant complains that his prior convictions were pled but not proven, as required by *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435]. Defendant, however, admitted the prior prison terms and prior serious felony, which means the trial court was entitled to impose a sentence that took those prior convictions into account.

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

We do note, however, one minor error in the preparation of the abstract of judgment that requires correction. The trial court ordered defendant to pay one \$30 criminal conviction assessment fee for each count. The abstract of judgment reflects only one \$30 fee, rather than the three ordered. Accordingly, we shall direct the trial court to prepare a corrected abstract of judgment reflecting the additional fees.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.