

NOT TO BE PUBLISHED

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

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY JAMES O'NEILL,

Defendant and Appellant.

C069997

(Super. Ct. Nos.
10F01192 & 11F04857)

Following the denial of his suppression motion, defendant Timothy James O'Neill pled no contest to two counts of possession of methamphetamine for sale (Health & Saf. Code, § 11378). Pursuant to the plea agreement, the trial court suspended imposition of sentence and placed defendant on a five-year term of formal probation with 365 days in county jail as one of the conditions.

On appeal, defendant contends the trial court erred in denying his suppression motion. Because we conclude defendant

is procedurally barred from seeking appellate review of the ruling, we shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

While defendant's crimes were committed on two separate occasions, his contention on appeal concerns a single traffic stop and search.

On the evening of July 10, 2011, Sacramento County sheriff's deputies conducted a traffic stop on defendant's pickup truck. Defendant became highly agitated after being asked whether he had anything illegal in the truck. Defendant's reaction led both deputies to conclude that he might be under the influence of narcotics, and they detained defendant so that a drug recognition expert from the California Highway Patrol (CHP) could examine him. One of the deputies also called for a canine unit with a trained narcotics dog.

Defendant was frisked, handcuffed, and placed in the patrol car while the deputies awaited the CHP officer. The CHP officer arrived about 18 minutes after the initial stop. He did not have drug recognition training, but determined that defendant's heart rate was abnormally high. The canine unit arrived during the CHP officer's examination of defendant. The dog jumped inside the open door of defendant's truck, but was pulled out. The dog later showed positive alerts on the inside of the driver's side door of the truck and on a backpack on the passenger seat.

The deputies then obtained a warrant to search the truck. They found 26.2 grams of methamphetamine, as well as packaging

materials, a scale, three Oxycontin pills, a used methamphetamine pipe, and \$245 in cash.

The magistrate denied defendant's suppression motion at the combined suppression motion and preliminary hearing. Defendant did not renew his suppression motion or file a motion to dismiss pursuant to Penal Code section 995 after the magistrate held him to answer.

DISCUSSION

Defendant contends the magistrate erred in denying his suppression motion. We decline to reach the merits of his claim because the contention is forfeited.

A defendant must seek review of a magistrate's ruling on a motion to suppress "in the superior court to preserve the point for review on appeal, for it would be wholly inappropriate to reverse a superior court's judgment for error it did not commit and that was never called to its attention" either by a motion to suppress evidence or a section 995 motion. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896 (*Lilienthal*)). The unification of the municipal and superior courts did not abrogate this requirement. (*People v. Richardson* (2007) 156 Cal.App.4th 574, 582, 589 (*Richardson*)). Here, it is undisputed that defendant failed to renew his motion in superior court.¹

¹ Defendant's briefing improperly includes a request to expand counsel's appointment to file a habeas petition. We do not address that request in this opinion.

Having ignored the forfeiture issue in his opening brief, defendant argues in his reply brief that *Richardson* was wrongly decided and that *Lilienthal* should be reconsidered. We decline to revisit *Richardson* and are bound by *Lilienthal*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.) We also decline defendant's novel request that we publish an opinion urging our Supreme Court to reconsider *Lilienthal*.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

BUTZ, Acting P. J.

MURRAY, J.