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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

KELLY LEE BOHANNAN,

Defendant and Appellant.

C075236

(Super. Ct. Nos. 10F2176,  
10F2330, 11F2362)

In July 2010, in case No. 10F2176, defendant Kelly Lee Bohannan pleaded no contest to possessing methamphetamine (Health & Saf. Code, § 11377, former subd. (a)) and admitted a prior strike allegation (Pen. Code, § 1170.12). At the same time, in case No. 10F2330, he pleaded no contest to felony vandalism (Pen. Code, § 594, former subd. (b)(1)), felony attempted vehicle theft (Pen. Code, § 664; Veh. Code, § 10851, former subd. (a)), and misdemeanor driving under the influence (Veh. Code, § 23152, former subd (a)). He also admitted the prior strike allegation and five prior prison term allegations. In April 2011, in case No. 11F2362, defendant pleaded guilty to transporting

methamphetamine. (Health & Saf. Code, § 11379, former subd. (a).) He was sentenced to prison for 16 years.

In a prior appeal to this court, we affirmed the judgment of conviction of the present offenses but vacated the true findings and resulting sentences on a prior serious felony conviction and an on-bail enhancement. We held (1) the trial court failed to find that defendant was the person described in the 1987 records of the prior conviction of dissuading a witness (Pen. Code, § 136.1), and (2) the trial court failed to elicit an admission to an allegation that defendant committed the offenses in case No. 10F2330 while released from custody in case No. 10F2176 (Pen. Code, former § 12022.1). The matter was remanded for further proceedings on those two issues. (*People v. Bohannan* (Feb. 8, 2013, C068482) [nonpub. opn.].)

On remand, the trial court heard and denied defendant's *Marsden* motion.<sup>1</sup> The court granted defendant's *Faretta* request, but he withdrew the request two weeks later.<sup>2</sup>

In September 2013 the trial court conducted a trial on the issue of defendant's identity as the person who had incurred the 1987 prior conviction. The court took judicial notice of the following documents filed in Shasta County case No. 87-1772. The information alleged that "Kelly Lee Bohannan" was charged with preventing and dissuading a witness from testifying in violation of Penal Code section 136.1, subdivision (c). The sentencing minutes and abstract of judgment indicate that "Kelly Lee Bohannan" was convicted of a violation of Penal Code section 136.1, subdivision (c), a felony, on May 1, 1987, and was sentenced on May 26, 1987. Imposition of sentence was suspended and "Kelly Lee Bohannan" was placed on formal probation for three years. The probation report lists defendant's biographical information, which is

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 806 [45 L.Ed.2d 562] (*Faretta*).

consistent with the biographical information listed for defendant in later cases. The defense presented no evidence and submitted on the prosecution's argument. The trial court found that defendant was the Kelly Lee Bohannon who had suffered the 1987 prior serious felony conviction.

In October 2013 the People moved to dismiss the Penal Code section 12022.1 allegation, a motion the court granted, thus obviating the need for further proceedings on that issue. Defendant was sentenced to prison for 14 years, awarded 1,160 days' custody credit (including sentenced time at the Department of Corrections and Rehabilitation) and 134 days' conduct credit (Pen. Code, § 4019), and ordered to pay \$600 victim restitution in case No. 10F2330, a \$200 restitution fine in each case (Pen. Code, § 1202.4), a \$200 restitution fine in each case, suspended unless parole is revoked (Pen. Code, § 1202.45), a \$160 court operations fee (Pen. Code, § 1465.8, subd. (a)(1)), and a \$120 court facilities assessment (Gov. Code, § 70373).

In October 2013 the trial court heard and denied defendant's second *Marsden* motion.

Defendant filed notices of appeal in November 2013 and December 2013. Each notice requested a certificate of probable cause. Both requests were denied.

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 contending his 1987 prior serious felony conviction, which he admitted as part of his July 2010 plea, is unlawful in that after the magistrate found the offense to be a misdemeanor, the prosecutor filed and prosecuted the matter as a felony. The contention is not properly before us. Having failed to obtain a certificate of probable cause (Pen. Code, § 1237.5), defendant cannot raise grounds

challenging the validity of the plea or a portion thereof (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098-1099; *People v. Panizzon* (1996) 13 Cal.4th 68, 74-75).

Our review of the record reveals two issues with respect to the second amended abstract of judgment filed on April 10, 2014.

First, on October 21, 2013, in case No. 10F2330, the trial court vacated the award of victim restitution after defendant's insurer paid the ordered sum to the victim. The second amended abstract reflects the order for victim restitution at item No. 9(b) but fails to note that the ordered sum has been paid and the award has been vacated. Defendant's appellate counsel raised this issue with the trial court in March 2014, but our records do not reflect that the matter has been resolved.

Second, defendant's appellate counsel noted that the second amended abstract fails to list separately defendant's presentence custody credits and his postsentence state prison credits. The trial court does not appear to have addressed this issue in response to appellate counsel's communication.

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

#### **DISPOSITION**

The judgment is affirmed. The trial court is directed to correct the second amended abstract of judgment to reflect that the victim restitution listed at item No. 9(b) has been paid and to separately list defendant's presentence custody credits and postsentence state prison credits, and to forward a certified copy thereof to the Department of Corrections and Rehabilitation.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ BLEASE \_\_\_\_\_, J.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.