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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD MARTIN WILKINSON,

Defendant and Appellant.

C081540

(Super. Ct. Nos. CM043833,
CM043987)

Defendant Todd Martin Wilkinson pleaded no contest to the crime of transient failure to register annually as a sex offender (Pen. Code, § 290.011, subd. (c))¹ in Butte County Superior Court case No. CM043833 (case No. 833), and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) in Butte County Superior Court case No. CM043987 (case No. 987). On appeal, defendant contends the trial court

¹ Undesignated statutory references are to the Penal Code.

erred by not inquiring into the factual basis for the plea and asks the matter be remanded for such inquiry.

We agree the trial court erred in not conducting an inquiry into the factual basis for defendant's plea. That error, however, was harmless. We affirm the judgment.

DISCUSSION

Section 1192.5 provides that if the trial court approves a negotiated plea, it must independently inquire whether a factual basis exists for a guilty plea. "The purpose of the factual basis requirement is to help ensure that the constitutional standards of voluntariness and intelligence are met. [Citation.]" (*People v. Palmer* (2013) 58 Cal.4th 110, 118 (*Palmer*)). In effect, section 1192.5 requires the court to " 'satisfy itself . . . that there is a factual basis for the plea.' " (*People v. Holmes* (2004) 32 Cal.4th 432, 435 (*Holmes*)). The purpose of the inquiry is "to 'protect against the situation where the defendant, although he realizes what he has done, is not sufficiently skilled in law to recognize that his acts do not constitute the offense with which he is charged.' " (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1576.)

"[T]he law 'does not require the trial court to interrogate a defendant personally in an element by element manner about the factual basis for his guilty plea. . . .'" (*People v. Calderon* (1991) 232 Cal.App.3d 930, 935.) Instead, "[t]he factual basis required by section 1192.5 does not require more than establishing a prima facie factual basis for the charges." (*Holmes, supra*, 32 Cal.4th at p. 441, fn. omitted.)

The trial court's finding that there is a factual basis for the plea is reviewed for abuse of discretion. (*Holmes, supra*, 32 Cal.4th at pp. 442-443.) "A finding of error under this standard will qualify as harmless where the contents of the record support a finding of a factual basis for the [negotiated] plea. [Citations.]" (*Id.* at p. 443; *People v. Coulter* (2008) 163 Cal.App.4th 1117, 1122.)

At the plea hearing, the court did not conduct an inquiry to confirm a factual basis existed for defendant's no contest plea, but the error was harmless, as the felony

complaints each provided a sufficient factual basis for defendant's plea. In count 1 of the felony complaint in case No. 833, the People alleged that "[o]n or about March 27, 2015, in the above named Judicial District, the crime of transient failure to register annually, in violation of Penal Code section 290.11(c), a Felony, was committed by [defendant], who being a person who, based upon a felony conviction and juvenile adjudication, registered as a person without a residence and who subsequently failed to register annually on his birthday, in accordance with section 290.012."

In count 1 of the felony complaint in case No. 987, the People alleged that "[o]n or about September 21, 2015, in the above named Judicial District, the crime of possessing a controlled substance after a specified prior conviction, in violation of Health and Safety Code Section 11377(a), a Felony, was committed by [defendant], who did possess methamphetamine, a controlled substance, and who previously had been convicted of an offense requiring registration pursuant to Penal Code Section 290(c)" along with a list of defendant's prior convictions. Defendant expressly acknowledged that he was pleading no contest to transient failure to register annually and possession of a controlled substance. Defendant also admitted on the record that he was previously convicted of possessing a controlled substance.

Moreover, defendant acknowledged that when he initialed and signed the plea form he discussed the case with his attorney and had no further questions. Defendant acknowledged that he understood his constitutional and statutory rights and agreed to waive them. In the plea form, appellant stipulated to a factual basis for his plea and that the trial court "may take facts from probation reports, police reports or other sources as deemed necessary to establish the factual basis." (See *Palmer, supra*, 58 Cal.4th at pp. 117-119 [factual stipulation by counsel without reference to documents establishing factual basis for plea is adequate to establish a factual basis for the defendant's guilty or nolo contendere plea].) This stipulation was not made by counsel, but by defendant himself.

A trial court is afforded flexibility in establishing a factual basis for the plea, as the primary goal of section 1192.5 is to “assur[e] that the defendant entered the plea voluntarily and intelligently.” (*Palmer, supra*, 58 Cal.4th at p. 119.) And here, the complaint and plea agreement, along with the statements made by the court, defendant, and counsel for both defendant and the People, show defendant entered the plea voluntarily and intelligently.

We thus conclude the trial court’s error in failing to conduct a factual basis inquiry was harmless.

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

RAYE, P. J.

DUARTE, J.