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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOSEPH TORRES,

Defendant and Appellant.

D059522

(Super. Ct. No. SCD223797)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed.

INTRODUCTION

David Joseph Torres appeals from a judgment following a negotiated guilty plea. Appellate counsel requested that this court conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After reviewing the entire record, we identify no reasonably arguable appellate issues and affirm the judgment.

BACKGROUND¹

Torres's Arrest

An undercover detective with a San Diego police department narcotic street team contacted Torres and arranged to buy heroin from him. The detective went with Torres to Torres's apartment complex. Torres went inside his apartment. He then came back outside and sold the detective 0.31 grams of heroin.

Torres invited the detective into his apartment to use the heroin. Torres mentioned his 82-year-old mother lived with him, but told the detective not to worry about her. The detective made a prearranged arrest signal and uniformed members of the narcotic street team arrived to arrest Torres. Torres saw the officers approaching, hurried back into his apartment and closed the door.

The detective described Torres to the narcotic street team case agent, indicating Torres had a distinctive tattoo under his eye. When Torres answered his door 30 minutes later, he had thick, flesh-colored makeup covering his face.

Members of the narcotic street team conducted a parole search of the apartment. They found three other people inside: Torres's sister, nephew, and mother. Torres's sister and nephew were living there temporarily.

¹ As there was no trial in this matter, we summarize the facts underlying Torres's convictions from the evidence adduced at the preliminary hearing.

Torres's mother was blind in one eye and had poor vision in the other, but was able to walk around without a cane or walker. She received public assistance of \$700 a month, most of which went to rent. Torres was her primary caregiver.

Torres's mother's bedroom was organized and somewhat clean. The rest of the apartment was dirty and clutter filled. There were dirty clothes in garbage bags. There were dirty dishes in the kitchen sink and spoiled food in the refrigerator. The bathroom smelled moldy and there were wet clothes in buckets occupying the majority of the bathtub. There were rodent droppings in the corner and cockroaches throughout the apartment.

There were also drug-related items in the apartment. There was a heating device for heroin, as well as baggies and balloons, in a kitchen drawer. There was a tin with open cut baggies in the bathroom. There were 11 new and used syringes and a drug pipe on the mantel in the living room.

Mental Competency Proceedings

Shortly after Torres's arraignment, the trial court suspended the criminal proceedings against Torres and referred Torres for an evaluation to determine whether he was mentally competent to stand trial. The trial court subsequently found Torres was not mentally competent to stand trial and committed him to Patton State Hospital (hospital) for a maximum term of three years. The trial court also authorized the hospital to involuntarily administer antipsychotic medication to Torres when and as prescribed by his treating psychiatrist.

Approximately eight months later, based on a doctor's report, the trial court found Torres was competent to stand trial and reinstated the criminal proceedings against Torres. Approximately two months later, after having conducted a preliminary hearing and binding Torres over for trial, the trial court again suspended the criminal proceedings against Torres and referred him for an evaluation to determine whether he was mentally competent to stand trial. The trial court subsequently found, based on another doctor's report, that Torres was competent to stand trial and again reinstated the criminal proceedings against him.

Plea Proceedings

Approximately two months after being found competent to stand trial for the second time, Torres entered a negotiated guilty plea to one felony count of possessing heroin for sale (Health & Saf. Code, § 11351) and one misdemeanor count of willful cruelty to an elder person under conditions likely to produce great bodily harm (Pen. Code, §§ 17, subd. (b), 368, subd. (b)(1)).² Torres also admitted having a prior strike conviction (§§ 667, subd. (b)-(i), 1170.12). As part of the plea agreement, Torres gave up his right to appeal issues related to his prior strike conviction and the stipulated sentence.

In accordance with the plea agreement, the trial court sentenced Torres to the lower term of two years for the possessing heroin for sale conviction, doubled for the prior strike conviction. The trial court sentenced Torres to time served for the willful

² Further statutory references are also to the Penal Code unless otherwise stated.

cruelty to an elder person conviction. The trial court awarded Torres 610 days of presentence custody credit, consisting of 470 days of actual custody credit and 140 days of conduct credit under section 4019.

Torres filed a notice of appeal and requested a certificate of probable cause, indicating he had been subject to mental competency proceedings and did not understand the plea agreement at the time of judgment and sentence. The trial court issued the certificate.

DISCUSSION

Appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal, but asked this court to review the record for error as mandated by *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel listed as possible, but not arguable, issues: (1) whether Torres validly waived his right to appeal issues related to his prior strike conviction and the stipulated sentence; (2) whether Torres's guilty plea was constitutionally valid; (3) whether there was a sufficient factual basis for Torres's guilty plea; (4) whether Torres's trial counsel provided ineffective assistance by failing to contest the doctor's reports finding Torres competent to stand trial; and (5) whether Torres was denied equal protection when the trial court failed to give him presentence conduct credit under section 4019 for the time he spent at the hospital before he was found competent to stand trial (*Anders* issues).

We offered Torres the opportunity to file a brief on his own behalf. He has not responded.

Our review of the entire record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the *Anders* issues identified by appellate counsel, has not disclosed any reasonably arguable appellate issues. Torres has been competently represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

AARON, J.