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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ALAN TIEBOUT,

Defendant and Appellant.

D060435, D060470

(Super. Ct. Nos. SCD229759,
SCS238204)

CONSOLIDATED APPEALS from a judgment of the Superior Court of San Diego County, Charles R. Gill and Ana L. España, Judges. Affirmed.

In April 2010, Joseph Alan Tiebout was charged with two counts of receiving stolen property and one count of disobeying a court order (SCS238204, the first case). The complaint further alleged that Tiebout had suffered a prison prior and a strike prior conviction. Tiebout pleaded guilty to one count of receiving stolen property, with the understanding that the court would place him on probation with a stipulated 365-day sentence stayed, pending successful completion of

probation. The trial court dismissed all other charges and allegations of the complaint.

In November 2010, prior to sentencing in the first case, an information was filed charging Tiebout with 45 counts of first degree burglary of an inhabited dwelling (SCD229759, the second case). The information also alleged that Tiebout had suffered a serious felony prior and a strike prior conviction. Tiebout pleaded guilty to all counts and allegations of the information, with the trial court indicating a sentencing lid of 69 years.

The trial court ultimately sentenced Tiebout to 67 years and 8 months, comprised of the low term of two years, doubled per the strike on count 3, with consecutive terms of one-third the middle term for one year, four months each, for the remaining 44 counts, plus five years consecutive. The court struck the strike prior allegations as to all counts except count 3. It also imposed a two-year midterm sentence in the first case, to be served concurrently with the sentence imposed in the second case. Tiebout received a total of 379 days credit.

DISCUSSION

Appointed appellate counsel filed a brief summarizing the facts and proceedings below. He presented no argument for reversal, but asked this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Under *Anders v. California* (1967) 386 U.S. 738, counsel listed as possible but not arguable issues, whether: (1) ineffective assistance of counsel rendered the guilty pleas and sentence invalid; (2) the trial court abused its discretion by not striking the

prior strike conviction as to all counts during sentencing; (3) the trial court erred by imposing consecutive sentences for each count to which Tiebout pled guilty; (4) the sentence constitutes cruel and unusual punishment; (5) the trial court committed prejudicial error by imposing a five-year consecutive sentence for a serious felony prior where there was no evidence presented that the prior burglary was residential; (6) the trial court sentenced Tiebout in violation of his plea agreement without providing him an opportunity to withdraw his plea; and (7) the trial court erred in awarding limited presentence credits under Penal Code section 2933.1. We granted Tiebout permission to file a brief on his own behalf. Tiebout did so, contending he pleaded guilty because his defense counsel represented he would receive a sentence of 13 to 17 years.

Generally, no appeal may be taken from a judgment of conviction on a plea of guilty or no contest. (Pen. Code, § 1237.5; *People v. Hunter* (2002) 100 Cal.App.4th 37, 41.) An exception exists to this general rule, providing that if a defendant "has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings [and][t]he trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court." (Pen. Code, § 1237.5, subs. (a) & (b).)

"Thus, in [an] appeal, defendant may raise only those issues cognizable on appeal when a defendant obtains a certificate of probable cause under [Penal Code] section 1237.5. "Obtaining a certificate of probable cause [however] does not

make cognizable those issues which have been waived by a plea of guilty.'"'

[Citation.] Under [Penal Code] section 1237.5, 'only "constitutional, jurisdictional, or other grounds going to the legality of the proceedings," survive a guilty plea.'

[Citation.]" (*People v. Hunter, supra*, 100 Cal.App.4th at pp. 41-42.)

Tiebout did not obtain a certificate of probable cause. In the absence of a certificate of probable cause, we may not consider the validity of the plea; whether the change of plea was knowingly, intelligently, or voluntarily made; or whether defendant was deprived of effective assistance of counsel. (Pen. Code, § 1237.5; see also *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

In any event, Tiebout has failed to show that his plea was not voluntary or that his counsel failed to act in a manner expected of other reasonably competent attorneys or that he had suffered prejudice as a result of his counsel's competency. (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) The record shows Tiebout was advised that if he pleaded guilty, the maximum penalty was 137 years, but that there was an agreed sentencing "lid of 69 years" and that the court would consider less. There is substantial evidence showing that Tiebout's plea was knowing, intelligent, and voluntary. In addition, the sentence was authorized and was imposed in accordance with the terms of the plea agreement. (Pen. Code, §§ 459-461, 667, subd. (e)(1), 1170.12, subd. (c)(1).)

We have now concluded our independent review of the record and find no arguable issues. Competent counsel has represented Tiebout on this appeal.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.