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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHAN JOSEPH SPENCER,

Defendant and Appellant.

D061473

(Super. Ct. No. SCD238201)

APPEAL from a judgment of the Superior Court of San Diego County, Theodore M. Weathers, Judge. Affirmed.

I.

INTRODUCTION

Nathan Joseph Spencer pled guilty to one count of receiving stolen property (Pen. Code, § 496, subd. (a))¹ (count 1). The trial court sentenced Spencer to the middle term of two years in prison. (§§ 496, subd. (a), 1170, subd. (h).) We affirm.

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

II.

FACTUAL AND PROCEDURAL BACKGROUND²

On December 22, 2011, the People charged Spencer with receiving stolen property (§ 496, subd. (a)) (count 1); possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) (count 2); possession of a designated controlled substance (Health & Saf. Code, § 11375, subd. (b)(2)) (count 3); and unauthorized possession of a hypodermic needle or syringe (Bus. & Prof. Code, § 4140) (count 4).

On January 6, 2012, Spencer and the People reached a plea agreement pursuant to which they agreed that Spencer would plead guilty to one count of receiving stolen property (§ 496, subd. (a)) (count 1) and receive a two-year prison sentence, and the People would dismiss the balance of the charges. That same day, Spencer pled guilty to count 1. The trial court dismissed the remaining charges on the People's motion, and the court sentenced Spencer to the middle term of two years in prison. Spencer timely appealed.

Spencer's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Spencer subsequently filed a supplemental brief on his own behalf.

² There was no preliminary hearing or trial in this case. At the change of plea hearing, the parties stipulated to a factual basis for the plea based on the change of plea form. The form states, "I knowingly possess[ed] stolen property."

III.

DISCUSSION

A. *A review of the record discloses no error*

In his brief on appeal, Spencer's counsel presents no argument for reversal, but asks 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 lists as possible, but not arguable, issues: (1) "Was appellant properly advised of his constitutional rights, consequences of pleading guilty, and did he voluntarily waive them?" (2) "Does the allegation that appellant is subject to a mandatory state prison sentence pursuant to . . . section[] 1170, subdivision[s] (f) and (h)(3) need to be admitted before a criminal defendant is sentenced . . . for a crime punishable pursuant to section 1170, subdivision (h)?"

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Spencer has been competently represented by counsel on this appeal.

B. *Spencer is not entitled to reversal of the judgment based on the ineffective assistance of counsel claim that he asserts in his supplemental brief*

In his two-page supplemental brief, Spencer asserts that he was "given the wrong information by [his public defender]" and that his the public defender "forced [him] to sign a [two]-year deal." Spencer claims that this conduct constituted "reversible error."

Because Spencer's ineffective assistance of counsel claim challenges the validity of his guilty plea, he was required to obtain a certificate of probable cause from the trial court in order to raise the issue on appeal. (§ 1237.5; see *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) His failure to obtain a certificate of probable cause bars this court from considering the claim on appeal. (See *Stubbs, supra*, at p. 245.) In addition, Spencer's claim fails because there is no evidence in the record to suggest that defense counsel forced Spencer to plead guilty. Spencer's claim is based on matters outside the record on appeal and must be raised in a habeas corpus proceeding. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266–267.)³

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.

³ In his supplemental brief, Spencer also states that he is without legal resources necessary to prepare an appeal. However, he does not make any specific claim based on this assertion.