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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES WILLIAMSON,

Defendant and Appellant.

D061944

(Super. Ct. No. SCD232780)

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

James Williamson pled guilty to first degree burglary (Pen. Code, § 459),¹ unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)); withholding a stolen vehicle (§ 496d); unauthorized possession of a hypodermic needle (Bus. & Prof. Code, former § 4140); and failure to appear while on bail (§ 1320.5), with the special allegation that he committed that crime while released on bail from a felony charge (§ 12022.1, subd. (b)).

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

Consistent with the maximum sentence that Williamson was promised as part of his guilty plea, the trial court sentenced Williamson to prison for a term of four years eight months.

Without obtaining a certificate of probable cause, Williamson filed a notice of appeal. He argues that (1) the trial court was required by section 654 to stay the sentence on the offense of unlawfully taking a vehicle; and (2) the trial court abused its discretion by imposing consecutive, rather than concurrent, prison terms for certain counts. We reject Williamson's arguments and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The factual basis for Williamson's guilty plea was the transcript of the preliminary hearing. According to that transcript, Robert Bell awoke in the morning to find his vehicle missing from the driveway of his home, along with his cell phone and his swimming trunks that contained his wallet and vehicle keys. The sliding door to the kitchen was open. Bell notified the police, who located Bell's vehicle later that day. When police found the vehicle, Williamson was near it with the keys in his pocket. Williamson was wearing Bell's swim trunks, which contained Bell's drivers license and credit cards. A backpack recovered from the vehicle contained Bell's cell phone.

Williamson was charged with first degree burglary (§ 459); unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)); withholding a stolen vehicle (§ 496d); and unauthorized possession of a hypodermic needle (Bus. & Prof. Code, former § 4140). When Williamson failed to appear in court for a preliminary hearing, the People amended

the complaint to charge a failure to appear while on bail (§ 1320.5) with the special allegation that Williamson committed that crime while released on bail from a felony charge. (§ 12022.1, subd. (b).)

Williamson pled guilty, with the promise of a maximum sentence of eight years four months. Prior to sentencing, the trial court ordered a diagnostic study and recommendation pursuant to section 1203.03. At the sentencing hearing, the trial court rejected Williamson's argument that he should be placed in a drug treatment program instead of being sentenced to prison.

The trial court imposed consecutive sentences of two years for the burglary (§ 459), eight months for the failure to appear (§ 1320.5), and two years for the special allegation that Williamson failed to appear while released on bail from a felony charge (§ 12022.1, subd. (b)) — for a total term of four years eight months. The trial court also imposed a concurrent sentence of two years for unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)), and, pursuant to section 654, it stayed the sentence for withholding a stolen vehicle (§ 496d).

II

DISCUSSION

A. *Because He Did Not Obtain a Certificate of Probable Cause, Williamson May Not Argue that a Different Sentence Was Required Under Section 654*

Williamson contends that the trial court was required, pursuant to section 654, to stay the sentence on the conviction for unlawfully taking a vehicle because the burglary was simply a means toward the objective of obtaining the keys to take the vehicle.²

Williamson's claim is foreclosed because he did not obtain a certificate of probable cause to appeal.

"A defendant may not appeal 'from a judgment of conviction upon a plea of guilty or nolo contendere,' unless he has obtained a certificate of probable cause. [Citations.] Exempt from this certificate requirement are postplea claims, including sentencing issues, that do not challenge the validity of the plea. [Citations.] For example, 'when the claim on appeal is merely that the trial court abused the discretion the parties intended it to

² "Under section 654, subdivision (a), '[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.' (*Ibid.*) '[S]ection 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. . . . If all the offenses were *incident to one objective*, the defendant may be punished for any *one* of such offenses but not for more than one.' . . . Where the commission of one offense is merely "'a means toward the objective of the commission of the other,'" section 654 prohibits separate punishments for the two offenses. [¶] Where 'section 654 prohibits multiple punishment, the trial court must stay execution of sentence on the convictions for which multiple punishment is prohibited.'" (*People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1288-1289, citations omitted.)

exercise, there is, in substance, no attack on a sentence that was "part of [the] plea bargain." [Citation.] Instead, the appellate challenge is one contemplated, and reserved, by the agreement itself.'" (*People v. Cuevas* (2008) 44 Cal.4th 374, 379 (*Cuevas*).

When, as here, "the plea agreement was based on a mutual understanding . . . that the court had authority to impose the lid sentence, defendant's contention that the lid sentence violated the multiple punishment prohibition of . . . section 654 [is] in substance a challenge to the plea's validity and thus require[s] a certificate of probable cause, which defendant failed to secure. Absent a certificate of probable cause, the Court of Appeal [cannot] entertain his sentence challenge" (*People v. Shelton* (2006) 37 Cal.4th 759, 769.)

Our Supreme Court's analysis in *Cuevas* is directly applicable here. In *Cuevas*, as here, the defendant entered into a guilty plea with an agreed-upon maximum sentence. Without obtaining a certificate of probable cause, the defendant sought to challenge the imposition of a sentence on two counts that he contended fell under the stay provision of section 654. As our Supreme Court explained in rejecting the defendant's appeal, "Defendant received what he negotiated and agreed to under the plea agreement, and he must abide by the terms of the agreement. [Citation.] In asserting that section 654 requires the trial court to stay any duplicative counts, defendant is not challenging the court's exercise of sentencing discretion, but attacking its *authority* to impose consecutive terms for these counts. This amounts to a challenge to the plea's validity, requiring a certificate of probable cause, which defendant failed to secure. [Citations.] Therefore,

his appeal based on section 654 is barred." (*Cuevas, supra*, 44 Cal.4th at p. 384.)³ As in *Cuevas*, Williamson's attempt to challenge the authority of the trial court to impose a specific sentence falling within the agreed-upon maximum range is foreclosed by his failure to obtain a certificate of probable cause.

B. *Williamson's Challenge to the Imposition of Consecutive Prison Terms Is Without Merit*

Williamson argues that the trial court abused its discretion by electing to impose consecutive, rather than concurrent, prison terms on the burglary, the failure to appear and the special allegation (§ 12022.1, subd. (b)). According to Williamson, the trial court was required to exercise its discretion to impose concurrent terms because of the mitigating factors presented at sentencing, including his history of drug use, mental health issues and family problems.

The Attorney General contends that Williamson waived this argument by not asserting it in the trial court. We agree. "[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*People v. Scott* (1994) 9 Cal.4th 331, 356.)

³ In this case, unlike *Cuevas*, the trial court imposed *concurrent* terms, not *consecutive* terms. The distinction does not impact our analysis. In a challenge to either a consecutive or concurrent term under section 654 the claim is that the trial court lacked *authority* to impose the sentence. As *Cuevas* establishes, a challenge to the trial court's authority to impose the sentence agreed to in the guilty plea requires a certificate of probable cause. (*Cuevas, supra*, 44 Cal.4th at p. 384.) We accordingly find no merit to Williamson's attempt to distinguish the applicable case law on the basis that the relief he seeks would not *shorten* his sentence, in that he seeks to stay a *concurrent* term. The dispositive point is that Williamson is challenging the trial court's *authority* to impose the sentence, which is foreclosed without a certificate of probable cause.

Williamson's contention that the trial court did not give sufficient weight to certain mitigating factors is a challenge to the manner in which the trial court exercised its sentencing discretion. Because Williamson did not raise the issue in the trial court, he cannot argue it for the first time on appeal.

Moreover, even were we to reach the issue, the trial court was well within its discretion to impose consecutive sentences. "[A] trial court has discretion to determine whether several sentences are to run concurrently or consecutively. [Citations.] In the absence of a clear showing of abuse, the trial court's discretion in this respect is not to be disturbed on appeal. [Citation.] Discretion is abused when the court exceeds the bounds of reason, all of the circumstances being considered.'" (*People v. Caesar* (2008) 167 Cal.App.4th 1050, 1059-1060.) According to the applicable rule, "[a]ny circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences" (Cal. Rules of Court, rule 4.425(b).) The trial court's comments show that it understood its discretion to chose between concurrent and consecutive terms. Further, the trial court thoroughly considered the mitigating factors that Williamson relies on in this appeal, but it had a reasonable basis for concluding that, in light of certain aggravating factors, the factors in mitigation did not justify the imposition of a more lenient sentence. As the trial court explained, the prison sentence was warranted because the "hot prowl" burglary was a dangerous crime with the potential for causing injury or death, Williamson's had a significant criminal history, and a prison sentence could motivate Williamson to finally address his drug addiction. That same

reasoning amply supports the trial court's exercise of its discretion to increase Williamson time in prison by imposing consecutive, rather than concurrent, sentences.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.