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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY SENGSOURINTHOME,

Defendant and Appellant.

D062051

(Super. Ct. Nos. SCS254290,  
SCS255000 & SCD239473)

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

On February 29, 2012, in case No. SCS254290, Johnny Sengsourinthome entered a negotiated guilty plea to unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and admitted having suffered a prior conviction for the same offense (Pen. Code, § 666.5, subd. (a))<sup>1</sup> and two prior prison terms (§ 667.5, subd. (b)). The plea bargain included a stipulated six-year sentence, with four years to be served in the

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<sup>1</sup> Further statutory references are to the Penal Code.

custody of the sheriff and two years under the supervision of the probation officer. On March 21, Sengsourinthome moved to withdraw his plea, and the court granted the motion. That day, Sengsourinthome entered a negotiated guilty plea to the same charges and admitted having suffered four prior prison terms. The plea bargain included a stipulated eight-year sentence with five years to be served in the custody of the sheriff and three years under the supervision of the probation officer. The same day, in case No. SCS255000, Sengsourinthome entered a negotiated guilty plea to burglary (§ 459). On March 22, in case No. SCD239473, he entered a negotiated guilty plea to burglary (§ 459). On April 23, the court imposed an eight-year stipulated sentence: the four-year upper term for unlawful driving or taking of a vehicle with a prior conviction, with five years of the sentence to be served in the custody of the sheriff, and the remaining three years to be served under the supervision of the probation officer. The court imposed concurrent 16-month lower terms for the burglaries and one year for each prior prison term, to be served in the custody of the sheriff. Sengsourinthome appeals. We affirm.

#### BACKGROUND

On November 10, 2011, Sengsourinthome unlawfully entered a building occupied by Ace Cash Express with the intent to commit theft (case No. SCS255000). On November 15, he unlawfully entered a building occupied by US Bank with the intent to commit theft (case No. SCD239473). On January 25, 2012, he unlawfully took and drove a vehicle, the property of another, without the consent of the owner and with the intent to deprive the owner of possession of the vehicle (case No. SCS254290). Sengsourinthome had been previously convicted of felony vehicle theft.

On January 25, 2012, Sengsourinthome was arrested and jailed in case No. SCS254290. The investigation in case No. SCS255000 concluded while he was in jail in case No. SCS254290, and on February 28, he was rebooked into jail in case No. SCS255000. He was booked into jail in case No. SCD239473 on March 2.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel mentions as possible, but not arguable, issues: whether the court correctly calculated presentence custody credits and whether the court abused its discretion by ordering Sengsourinthome to serve five years of his eight-year sentence in custody and three years on mandatory supervision.

We granted Sengsourinthome permission to file a brief on his own behalf. He has responded with the following contentions. Trial counsel and the prosecutor "duped" Sengsourinthome in the plea bargaining process. The day after he signed the plea agreement with a six-year stipulated sentence, he was rebooked on a charge of committing check fraud in October 2011, a crime that occurred long before the vehicle theft, although he was not arrested until January 2012. Trial counsel and the prosecutor had knowledge of the charges on which Sengsourinthome was rebooked, but did not charge him with check fraud until he signed the six-year plea agreement. Trial counsel and the prosecutor withdrew the plea with the six-year stipulated sentence, and

Sengsourinthome was forced to sign a new plea agreement with an eight-year stipulated sentence and all of his prison priors. Had he not signed, he would have had to go to trial. Had all of the charges had been brought forward at once, he would not have had to withdraw his plea. He wished to be sentenced on the day of the six-year plea. The prior vehicle theft was based on the same offense as one of the prison priors. The sentence should have been split "down the middle." Credits were incorrect. All of the charges were filed by the same arresting officer.

Because Sengsourinthome did not obtain a certificate of probable cause, he cannot challenge the validity of his guilty plea or the stipulated sentence in the plea agreement. (§ 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1095; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) In any case, the record does not show any impropriety in the plea bargaining process, and on appeal we cannot review matters outside the scope of the record. (*People v. Roberts* (1963) 213 Cal.App.2d 387, 394.) The record shows that on February 29, 2012, Sengsourinthome personally waived his right to be sentenced within 20 days, and it does not show any request to be sentenced that day. The record shows that on March 21, Sengsourinthome personally stated he wished to withdraw his plea, and testified he understood his rights, the consequences of his plea, the terms of the new plea bargain and the possible penalty, and there had been no threats to induce the plea. The record reveals no impropriety in the investigation of the cases or the filing of charges. The record does not demonstrate Sengsourinthome received ineffective assistance of counsel, that is, counsel failed to act in a manner to be expected of a reasonably competent attorney, and counsel's acts or omissions prejudiced Sengsourinthome.

(*Strickland v. Washington* (1984) 466 U.S. 668.) It is not error to use the same prior conviction for purposes of sections 666.5, subdivision (a), and 667.5, subdivision (b). (*People v. Garcia* (2003) 107 Cal.App.4th 1159, 1165-1166.)

Sengsourinthome received the following credits: in case No. SCS254290, 90 days' actual credits and 90 days' conduct credits for a total of 180; and in both case Nos. SCS255000 and SCD239473, 56 days' actual credits and 56 days' conduct credits for a total of 112 in each case. Sengsourinthome received all credits to which he was entitled.

A review of the record pursuant to *Wende* and *Anders*, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Sengsourinthome has been competently represented by counsel on this appeal.

#### DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.