

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT BLEND RICH,

Defendant and Appellant.

E054548

(Super.Ct.No. SWF1101944)

OPINION

APPEAL from the Superior Court of Riverside County. Carl E. Davis, Judge.
(Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Patrick J. Hennessy, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On July 28, 2011, a felony complaint charged defendant and appellant Robert Blend Rich (defendant) with illegal possession of a shotgun under Penal Code¹ section 12020, subdivision (a) (count 1); unlawful possession of ammunition by a prohibited person under section 12316, subdivision (b) (count 2); and illegal possession of an assault weapon under section 12280, subdivision (b) (count 3). The complaint also alleged one prison prior within the meaning of section 667.5, subdivision (b), and one strike prior within the meaning of sections 667, subdivisions (c) and (e)(1) and 1170.12, subdivision (c)(1).

On August 2, 2011, defendant pled guilty to count 1 and admitted the prior strike conviction. The remaining counts and prison prior were dismissed. Pursuant to a plea agreement, defendant was sentenced to a stipulated term of 16 months, doubled under the three strikes law, for a total term of two years eight months. Defendant was given credit for 16 days of presentence credits.

The court ordered defendant to pay a \$200 restitution fine under Penal Code section 1202.4, subdivision (b); a \$200 parole revocation fine under Penal Code section 1202.45, suspended unless parole is revoked; a \$30 criminal conviction fee under Government Code section 70373; and a \$40 court security fee under Penal Code section 1465.8.

Defendant filed a notice of appeal on September 14, 2011. His request for a certificate of probable cause was denied on September 16, 2011.

¹ All statutory references are to the Penal Code unless otherwise specified.

I

STATEMENT OF FACTS

On July 26, 2011, defendant was found to be in possession of a shotgun when he was prohibited from possessing firearms due to a prior felony conviction.

II

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his two-page supplemental brief, defendant essentially contends that he received ineffective assistance of counsel (IAC) by his trial counsel. Similar arguments were made by defendant in his request for certificate of probable cause, which was denied.² Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

² Defendant also seems to challenge the validity of the trial court's denial of his certificate of probable cause. However, an order denying a certificate of probable cause is not appealable under section 1237, but is reviewable only by writ of mandamus. (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188.)

We hereby address defendant's IAC claim. First, we note that defendant's IAC claim seems to be based on a police report that is not in the record on appeal. IAC claims based on matters outside the record on direct appeal are more appropriately raised in a habeas corpus proceeding. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) We therefore reject defendant's IAC contention.

However, even if we were to address defendant's IAC claim, for the reasons set forth below, his claim fails. In order to establish a claim of IAC, a defendant must demonstrate, "(1) counsel's performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation prejudiced the defendant, i.e., there is a 'reasonable probability' that, but for counsel's failings, defendant would have obtained a more favorable result. [Citations.] A 'reasonable probability' is one that is enough to undermine confidence in the outcome. [Citations.]" (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541, citing, among other cases, *Strickland v. Washington* (1984) 466 U.S. 668; accord, *People v. Boyette* (2002) 29 Cal.4th 381, 430.) Hence, an IAC claim has two components: deficient performance and prejudice. (*Strickland v. Washington, supra*, at pp. 687-688, 693-694; *People v. Williams* (1997) 16 Cal.4th 153, 214-215; *People v. Davis* (1995) 10 Cal.4th 463, 503; *People v. Ledesma* (1987) 43 Cal.3d 171, 217.) If the defendant fails to establish either component, his claim fails.

In this case, defendant contends that his trial counsel rendered IAC because "all guns in question and ammunitions were legally and admittedly owned by defendant[']s

step-father and were legally kept, controlled, possessed in step father[']s home by him and he himself was under no legal obligation to store his weapons in any particular fashion regardless of who was on the premises (defendant) or who may or might come onto the premises.” Similar arguments were made by defendant in his request for certificate probable cause, which was denied.

At the hearing on August 2, 2011, prior to pleading guilty, the trial court informed defendant that it had the felony plea form with defendant’s initials and signature on it. The court then asked, “Did you sign and initial this document?” Defendant responded, “Yeah, I did, sir.” When the court asked defendant whether he read each paragraph and understood the information in those paragraphs, defendant responded, “Yes, sir.” The court went on to ask if defendant understood that he would be giving up all those rights if he pled guilty. Defendant responded, “Yes.”

The court then reminded defendant about the charges against him and the prior serious violent felony conviction allegation, and stated that “[i]t would be possible for you to be sentenced to prison for six years.” However, if defendant pled guilty to count 1 and admitted the prior conviction, he “would receive the low term sentence of 16 months, doubled by the allegation, for a period of 2 years, 8 months.” Then, just to ensure defendant understood what he was agreeing to do, the court asked: “Do you understand that if you do enter into it, you’ll give up all the rights on the document that you signed and initialed?” Defendant responded, “Yes, sir.”

The court then went on to ask defendant: “Is it true that you had in your possession on July 26, 2011, a Remington 870 shotgun, a violation of Penal Code section 12020 (a)(1)? Is that true?” Defendant responded, “Yeah, according to the way the law reads, yes, it is, sir.” At no time during this exchange did defendant mention that the gun did not belong to him. By his response, defendant admitted that the shotgun was in his possession, regardless of ownership.

When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel’s challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation. (*People v. Pope* (1979) 23 Cal.3d 412, 426.) Here, defendant was exposed to a term of six years in prison if he went to trial. By pleading guilty, defendant was sentenced to less than three years in prison. Moreover, defendant’s responses to the trial court’s questions showed that defendant understood exactly what he was doing. As provided above, he admitted that he possessed a shotgun “according to the way the law reads.”

Based on the above, we find that defense counsel did not render assistance below an objective standard of reasonableness under prevailing professional norms by allowing defendant to plead guilty to count 1.

We have now concluded our independent review of the record and found no arguable issues.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.