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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY JEROME CONLEY,

Defendant and Appellant.

E055691

(Super.Ct.No. RIF1102917)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.

Affirmed.

Jan Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On September 7, 2011, an information charged defendant and appellant Danny Jerome Conley with two counts of unlawfully selling cocaine under Health and Safety

Code section 11352, subdivision (a) (counts 1 & 2). As to both counts, the information also alleged that defendant was convicted of a prior felony for violating Health and Safety Code section 11352, subdivision (a), within the meaning of Health and Safety Code section 11370.2, subdivision (a). The information further alleged that defendant had suffered 11 prior prison term convictions, within the meaning of Penal Code section 667.5, subdivision (b).

On November 30, 2011, defendant moved to relieve counsel and to represent himself. The trial court addressed defendant's concerns with his attorney, but denied the request to relieve counsel. As for defendant's request to represent himself, the trial court suggested that defendant discuss the matter further with his attorney.

Later that same day, in a different courtroom, the trial court reviewed defendant's petition to represent himself. The trial court explained that defendant would be held to the same standard as an attorney and could not claim ineffective assistance on appeal. Defendant decided to consider this information over lunch recess. When court reconvened, defendant withdrew his request to represent himself.

On January 10, 2012, defendant entered a guilty plea as to count 1 and admitted the enhancement alleged in count 1. Defendant also admitted the first prior prison term enhancement. On that same day, the court sentenced defendant to eight years—the midterm of four years on count 1, plus three years for the prior drug conviction enhancement and one year for the prior prison term, to run consecutively. Defendant was ordered to serve four years in county jail followed by four years on supervised release.

The court awarded defendant credit for time served of 154 actual days plus an additional 154 days under Penal Code section 2933, former subdivision (e)(1). The court then dismissed count 2 and struck the remaining enhancements.

On February 21, 2012, defendant filed his notice of appeal. That same day, the trial court granted defendant's certificate of probable cause.

STATEMENT OF FACTS¹

On March 30, 2011, Detective Jayson Wood was conducting undercover surveillance for drug activity in a Rite-Aid parking lot in Riverside County. He observed defendant and another individual engaged in what appeared to be a hand-to-hand drug transaction. Based upon his observations, a confidential reliable informant was given \$40 and instructed to attempt to purchase drugs from defendant. The informant approached defendant and asked to purchase "two doves," which meant \$40 worth of rock cocaine. The informant purchased \$40 worth of rock cocaine from defendant. This drug transaction was videotaped.

On April 22, 2011, at the direction of Detective Wood again, the informant purchased 0.8 grams of rock cocaine from defendant.

¹ Since defendant pled guilty prior to trial and no probation report was requested, the statement of facts is taken from the preliminary hearing.

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 three-page handwritten brief, defendant argues that he should be allowed to withdraw his guilty plea because he is only entitled to 231 days of presentence credit, but the parties agreed that defendant would receive 308 days of presentence credit. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

In this case, under a negotiated plea agreement, the parties agreed that defendant would receive a total of 308 days of presentence credit—154 days for actual credit and 154 days of credit under Penal Code section 2933. At the sentencing hearing, the trial court ordered precisely what the parties bargained for in the plea agreement—308 days of presentence credit. Defendant, however, makes an argument that his presentence credit should be reduced to 231 days under the operative law at the time he was sentenced; and then, he should be allowed to withdraw his guilty plea because he pled guilty based upon being awarded 308 days of presentence credit, not 231 days. Defendant's argument is without merit.

Here, the parties agreed that defendant would be awarded 308 days of presentence credit, which was more beneficial to him than what he would have received without the plea agreement. Defendant, therefore, has waived his right to argue that he should be awarded a different number of days of presentence credit. In the context of a plea bargain, the question of the scope of a waiver is usually approached as a question of contract interpretation: “to what did the parties expressly or by reasonable implication agree?” (*In re Uriah R.* (1999) 70 Cal.App.4th 1152, 1157.) “As a general proposition, a broad or general waiver, such as ‘I waive my appeal rights,’ will include error occurring prior to the waiver, but not subsequent error because the defendant could not make ‘a knowing and intelligent waiver of the right to appeal any unforeseen or unknown future error’” (*Ibid.*, quoting *People v. Vargas* (1993) 13 Cal.App.4th 1653, 1662 [Fourth Dist., Div. Two].) If, however, the defendant agrees to a plea bargain which includes a specific or indicated sentence, “as opposed to a [sentencing] matter [that is] left open or unaddressed by the deal,” and if that is the sentence actually imposed, the waiver will foreclose appellate review of the sentence. (*People v. Panizzon* (1996) 13 Cal.4th 68, 86; see also *Vargas*, at p. 1662; *Uriah R.*, at p. 1157.)

Here, the facts show that defendant voluntarily agreed to credit for time served of 154 actual days plus an additional 154 days under Penal Code section 2933, former subdivision (e)(1), for a total of 308 days. Defendant cannot now argue that he is only entitled to presentence credits of 231 days in order to withdraw his guilty plea.

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

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.
RICHLI
J.