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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.

JOHN EDWARD BUCHANAN,

Defendant and Appellant.

E055754

(Super.Ct.No. RIF1103842)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster,  
Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

On November 7, 2011, in a one-count information, defendant and appellant John  
Edward Buchanan was charged with unauthorized possession of a syringe in state prison  
in violation of Penal Code section 4573.6. The information also alleged one prior serious

or violent felony conviction within the meaning of Penal Code sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1), and four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). At his arraignment on November 22, 2011, defendant pled not guilty, and denied all special allegations and enhancements.

On February 14, 2012, pursuant to a plea agreement with a negotiated disposition, defendant withdrew his not guilty plea, pled guilty to count 1, and admitted the prior serious or violent felony conviction. In exchange, the parties agreed to a six-year prison term.

Before pleading guilty, defendant was informed of, and waived his rights to trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense, and to testify in his own defense; and his privilege against self-incrimination. Moreover, prior to entry of his plea, defendant initialed and signed a felony plea form in which he was advised of, and waived, his constitutional rights.

Defense counsel joined in the waiver of defendant's rights, concurred in his plea, and stipulated to a factual basis based on the People's trial brief. Defendant also agreed in the written plea form that he "did the things that are stated in the charges" he was admitting. The trial court found (1) a factual basis for the plea based on the People's trial brief and written plea agreement; (2) that defendant expressly, knowingly, understandingly, and intelligently waived his constitutional rights; and (3) that defendant's plea was free and voluntary. The trial court then accepted the plea and found defendant guilty on count 1.

Defendant waived his right to a probation referral and report, and requested immediate sentence. The court sentenced defendant to the middle term of three years, doubled to six years under Penal Code section 667, subdivision (e)(1). The court ordered defendant's sentence to be served consecutive to a sentence previously imposed in Los Angeles County case No. NA08079701. The court also imposed a restitution fine in the amount of \$200 under Penal Code section 1202.4, subdivision (b), and imposed but suspended a parole revocation fine in an equal amount under Penal Code section 1202.45. The court ordered defendant to provide DNA or other biological samples and fingerprints under Penal Code section 296. The court further imposed a \$40 court security fee under Penal Code section 1465.8, subdivision (a)(1), and a \$30 criminal conviction assessment under Government Code section 70373.

On February 28, 2012, defendant filed a request to withdraw his guilty plea based on a preplea violation by the People of defendant's Sixth and Fourteenth Amendment evidence discovery and disclosure rights under *Brady v. Maryland* (1963) 373 U.S. 83. The court denied the request on the same day.

On February 28, 2012, defendant filed a timely notice of appeal based on the sentence or other matters occurring after the plea. Defendant did not file a request for certificate of probable cause.

## I

### STATEMENT OF FACTS<sup>1</sup>

The People’s trial brief, in pertinent part, stated: “The defendant in this case is a sentenced inmate with the California Department of Corrections serving a four year sentence . . . . On July 13, 2011, Correctional Officers located the defendant laying in a stairwell in Dorm 101 at the California Rehabilitation Center in Norco, a level II prison. Correctional Officer Trevino saw defendant on his back on the floor and he appeared to be unconscious. Facility medical staff arrived and began assessing and treating the defendant. Registered Nurse Bauer directed one of the medical staff to begin cutting off defendant’s clothing and as that was being done, Officer Trevino noticed what appeared to be a syringe in the back pocket of defendant’s pants. Officer Trevino removed the object and confirmed that it was a syringe with a needle attached, that the plunger was depressed, and that the syringe appeared to be empty.”

## 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

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<sup>1</sup> The parties stipulated to a factual basis for the plea based on the People’s trial brief.

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 one-page supplemental brief, defendant essentially contends that he received ineffective assistance of counsel (IAC) by his trial counsel. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

We hereby address defendant's IAC claim. We first note that defendant's waiver of his right to appeal and his failure to obtain a certificate of probable cause foreclose his IAC contention. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1100; *People v. Panizzon* (1996) 13 Cal.4th 68, 86.)

However, even if we were to address defendant's IAC claim, for the reason set forth below, his claim fails. In order to establish a claim of IAC, 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, 687, 694; accord, *People v. Boyette* (2002) 29 Cal.4th 381, 430.) Hence, an IAC claim has two

components: deficient performance and prejudice. (*Strickland*, 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 defendant fails to establish either component, his claim fails.

In this case, defendant contends that his trial counsel rendered IAC because, in reviewing the record, defendant discovered that there were three photographs instead of the alleged set of five photographs. Defendant claims that his trial counsel “should have realized that there was only a partial discovery given.” Had counsel known, “her judgement and outlook may very well [have] been different.” Even if the alleged failure to discover the two missing photographs fell below an objective standard of reasonableness, defendant has failed to show that he was prejudiced by this alleged failure. Defendant pled guilty to unauthorized possession of a syringe in state prison. The evidence showed that defendant was found unconscious in state prison with a syringe in the pocket of his pants. Defendant, in his brief, has failed to show how he would have obtained a more favorable result had these alleged two photographs been discovered by his counsel. Defendant’s IAC contention, therefore, fails.

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

III

DISPOSITION

The judgment is affirmed.

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MCKINSTER  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.