

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

LARRY LOUIS JUDGE,

Defendant and Appellant.

E056113

(Super.Ct.No. FSB1103639)

OPINION

APPEAL from the Superior Court of San Bernardino County. R. Glenn Yabuno, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On September 14, 2011, an information alleged that defendant and appellant Larry Louis Judge (1) possessed a controlled substance in violation of Health and Safety Code

section 11350, subdivision (a) (count 1); and (2) transported a controlled substance in violation of Health and Safety Code section 11352, subdivision (a) (count 2). The information also alleged that defendant had been convicted of a violent or serious felony within the meaning of Penal Code section 667, subdivisions (b) through (i), and had served two prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

On September 8, 2011, defendant waived his right to counsel and chose to represent himself. On September 21, 2011, defendant affirmed his prior waiver of his right to counsel. On December 2, 2011, the trial court denied defendant's motion for a change of venue. It also denied defendant's motion for recusal of the trial judge under Code of Civil Procedure section 170.6.

On March 15, 2012, defendant pled no contest to count 2, in exchange for a sentence of three years in prison and a dismissal of count 1 and the remaining allegations. The sentence was to be served concurrent with his sentence in another case, case No. FSB1102390. The preliminary hearing transcript served as the factual basis for the no contest plea.

The sentencing hearing occurred the same day. Defendant was sentenced to three years in state prison. He was awarded 203 days of actual credits and 203 days of conduct credits for a total award of 406 days. Defendant was ordered to pay a restitution fine of \$240 and a court security fee of \$70.

On April 18, 2012, defendant filed a “first amend notice of appeal.” On May 4, 2012, he filed an amended notice of appeal and requested a certificate of probable cause. The trial court granted the request for a certificate of probable cause.

STATEMENT OF FACTS¹

On July 4, 2011, Officer Jeffrey Dillon of the San Bernardino Police Department was on patrol. He observed a red BMW driven by defendant run a stop sign at the intersection of 6th Street and G Street. After the officer stopped defendant, he found cocaine base in defendant’s left sock. He also found a methamphetamine pipe in a coffee cup which was inside the vehicle. The cocaine base weighed 0.36 grams with the packaging; Officer Dillon believed that was a usable amount of cocaine.

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, and he has done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

¹ The statement of facts is taken from the preliminary hearing transcript which served as the factual basis for the plea.

On October 15, 2012, defendant filed his first supplemental brief. In his eight-page handwritten brief, defendant essentially argues that his appellate counsel is ineffective for filing a brief under *People v. Wende, supra*, 25 Cal.3d 436. Appellate counsel has the duty to prepare a legal brief containing citations to the appellate record and appropriate authority. Counsel must set forth all arguable issues and cannot argue the case against his or her client. To establish ineffective assistance of counsel, however, the defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and prejudice from counsel's unprofessional errors. (*Strickland v. Washington* (1984) 466 U.S. 668, 694.) The defendant bears the burden of proving ineffective assistance of counsel by a preponderance of the evidence. (*People v. Harris* (1993) 19 Cal.App.4th 709, 714.)

The fact that appellate counsel followed the procedure set forth in *People v. Wende, supra*, 25 Cal.3d 436 is insufficient, by itself, to show appellate counsel has been ineffective. Defendant has failed to meet his burden of proof on this issue.

Moreover, although it is unclear, defendant seems to be arguing that the evidence was insufficient to support a conviction for possessing a controlled substance. In this case, however, defendant pled no contest to count 2. He admitted that he transported a controlled substance. He cannot now claim that the substance was not a controlled substance.

In addition to his supplemental brief, defendant filed a second supplemental brief and "motion access to court compel" on October 30, 2012. In this brief, he renewed his

motion for access to the law library. We agree with the order we issued on September 21, 2012, and again state that defendant has failed to establish that he has been denied prison library access that would impede his access to the courts. (*In re Harrell* (1970) 2 Cal.3d 675, 694, explained by *People v. Loyd* (2002) 27 Cal.4th 997.)

Defendant also seems to be arguing that the prosecution and the trial court committed misconduct because the information alleged a violation of Penal Code section 667.5, subdivision (b), when “I did not suffer a felony conviction within five (5) years.” Defendant’s argument, however, is moot as that allegation was dismissed.

Furthermore, defendant appears to be arguing that the three strikes law is unconstitutional. The three strikes law, however, was not applied to defendant as the allegations under that law were dismissed.

We have concluded our independent review of the record and find no arguable issues. Since, after our own independent review of the record, we have concluded no reasonably arguable legal or factual argument exists, appellate counsel’s filing of a brief under *People v. Wende* was not ineffective assistance.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.
RICHLI
J.