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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.

URVANO MORENO LOPEZ,

Defendant and Appellant.

E057079

(Super.Ct.No. FSB1103517)

OPINION

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

Kenneth H. Nordin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Urvano Moreno Lopez appeals his conviction following a guilty plea.

We will affirm the conviction.

PROCEDURAL HISTORY

Defendant was charged with three counts of assault by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1); counts 1-3),¹ with allegations of personal infliction of great bodily injury (§ 12022.7, subd. (a)) with respect to each count. He was also charged with three counts of battery with serious bodily injury. (§ 243, subd. (d); counts 4-6.)

Pursuant to a plea bargain, defendant pleaded guilty to counts 1 and 3 and admitted the great bodily injury allegation as to count 1. He received the agreed-upon term of five years, and all other counts and allegations were dismissed.

Before sentencing, defendant filed a motion to withdraw his guilty plea, asserting that he suffered from mental limitations as a result of a serious brain injury sustained when he was a child. The court denied the motion.

Defendant filed a timely notice of appeal. His application for a certificate of probable cause was denied.

FACTS

Defendant and three friends were involved in an altercation, during which they assaulted and seriously injured Anthony Rodriguez, Victoria S. and Sarah G. Defendant admitted to striking Anthony Rodriguez.

¹ All statutory citations refer to the Penal Code.

DISCUSSION

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. We offered defendant the opportunity to file any supplemental brief he deemed necessary, but he did not do so.

We have examined the entire record and have found no sentencing error, nor any other postplea error. We are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

In reaching this conclusion, we examined several matters mentioned by appointed counsel but not argued.

First, counsel mentions that the sentence may be unauthorized because defendant's admission to the great bodily injury allegation in connection with count 1 is not supported by the record. He notes that although the victim in count 1 is Anthony Rodriguez, the great bodily allegation pertaining to defendant states that he inflicted injury on Victoria S.

In *People v. Soriano* (1992) 4 Cal.App.4th 781, the court held that a trial court lacks jurisdiction to accept a no contest or guilty plea which involves a "legally impossible admission." (*Id.* at pp. 783-786.) In that case, the defendant pleaded no contest to attempting to file a forged instrument, specifically a death certificate, in violation of section 115. A death certificate is not an "instrument" as defined in section 115, however, thus rendering defendant's admission a legal impossibility. (*Id.* at p. 783.) However, the court expressly stated that a defendant may raise such a contention on

appeal from a guilty plea only if the procedural requirements of section 1237.5 pertaining to certificates of probable cause are met. (*Id.* at pp. 783-785 & fns. 1 & 2; see also *People v. Panizzon* (1996) 13 Cal.4th 68, 76 [in the absence of a certificate of probable cause, any issues pertaining to the validity of the plea are not cognizable on appeal].) Here, defendant did not obtain a certificate of probable cause. Accordingly, the issue is not cognizable on appeal.

Second, counsel suggests that the trial court erred by denying defendant's motion to withdraw his plea. We conclude that the trial court's factual findings were supported by substantial evidence, and we find no abuse of discretion in denying the motion. Moreover, the claim is foreclosed by the absence of a certificate of probable cause. (*People v. Panizzon, supra*, 13 Cal.4th at p. 76.)

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P.J.

We concur:

RICHLI
J.

KING
J.