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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.

FRED EDWARD ARCHULETA,

Defendant and Appellant.

E057539

(Super.Ct.No. FSB903801)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. Affirmed with directions.

Patrick E. DuNah, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Fred Edward Archuleta pled guilty to one count of conspiracy to sell methamphetamine. (Pen. Code, § 182; Health & Saf. Code, § 11379, subd. (a).) He also admitted a gang enhancement (Pen. Code, § 186.22, subd. (b)(1)) and two prior strike convictions (Pen. Code, §§ 667, subd. (b)-(i))

& 1170.12), in exchange for the dismissal of 27 other counts. In accordance with the agreement, the trial court sentenced him to 25 years to life in state prison due to the prior strikes, and stayed a two-year term on the gang enhancement. The court ordered the sentence to run consecutive to defendant's previously imposed sentence in case No. FVI802610. The court also awarded 1,586 days of presentence custody credits (1,058 actual days and 528 conduct credits).<sup>1</sup>

Defendant filed a timely notice of appeal challenging the validity of the plea and requesting a certificate of probable cause. The court denied the request. Defendant filed an amended notice of appeal challenging the sentence or other matters occurring after the plea. We affirm.

#### PROCEDURAL BACKGROUND

Defendant was charged with and admitted that, on or about January 1, 2007 through June 1, 2008, he conspired to sell methamphetamine. (Pen. Code, § 182; Health & Saf. Code, § 11379, subd. (a).)

#### DISCUSSION

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 and two potential arguable issues: (1) whether defendant's guilty plea was

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<sup>1</sup> The trial court originally did not order any conduct credits. However, the court subsequently corrected the error in response to a letter filed in the trial court by appellate counsel in February 2013.

constitutionally valid; and (2) whether the issue of the voluntariness of his plea bargain is cognizable on appeal in light of the trial court's denial of his request for certificate of probable cause and in the absence of any motion to withdraw the plea. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.<sup>2</sup>

However, we note that the abstract of judgment neglects to indicate that defendant was sentenced pursuant to the Three Strikes law. This appears to be a clerical error since the plea agreement states that defendant was to be sentenced to 25 years to life "per admission of [the] prior strikes," and the court expressed that it sentenced defendant to 25 years to life due to the prior strikes. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) A court "has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. [Citations.]" (*In re Candelario* (1970) 3 Cal.3d 702, 705.) It is evident that the superior court clerk's error in failing to mark box No. 8 on the abstract of judgment indicating that

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<sup>2</sup> We note there is no arguable issue concerning the Three Strikes Reform Act of 2012 (Pen. Code, §§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C)), even though defendant's current felony was not a serious or violent felony. First, defendant failed to obtain a certificate of probable cause. Since his sentence was an integral part of his negotiated plea agreement, any challenge to it would require a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 73, 78.) Second, he admitted a prior strike conviction for attempted murder. This conviction disqualifies him for resentencing under the Reform Act. (Pen. Code, § 667, subd. (e)(2)(C)(iv)(IV).)

defendant “was sentenced pursuant to . . . [Penal Code sections] 667[, subdivisions] (b)-(i) or [] 1170.12” was inadvertent. Accordingly, we will direct the clerk to correct the abstract of judgment.

DISPOSITION

The superior court clerk is directed to mark box No. 8 on the abstract of judgment indicating that defendant was sentenced pursuant to Penal Code sections 667, subdivisions (b)-(i) or 1170.12. The clerk is further directed to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.