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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.

DERRICK MICHAEL SPRINGFIELD,

Defendant and Appellant.

E059020

(Super.Ct.No. FVI1200791)

OPINION

APPEAL from the Superior Court of San Bernardino County. Debra Harris,  
Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

**INTRODUCTION**

On April 3, 2012, a felony complaint charged defendant and appellant Derrick  
Michael Springfield with transportation of a controlled substance (Health & Saf. Code,

§ 11352, subd. (a), count 1) and street terrorism (Pen. Code, § 186.22, subd. (a), count 2).<sup>1</sup> The complaint also alleged that defendant had been convicted of carrying a loaded firearm in public while an active participant in a criminal street gang (former Pen. Code, § 12031, subd. (a)(2)(C), now § 25850, subds. (a) & (c)(3)), which qualifies as a serious felony prior, a strike prior, and a prison prior (Pen. Code, §§ 667, subds. (a) & (b)-(i), 667.5, subd. (b).)<sup>2</sup>

On December 11, 2012, at a change of plea hearing, the prosecutor amended the information to add count 7, possession of a controlled substance for sale under Health and Safety Code section 11351. Defendant pled no contest to count 7 and admitted a strike prior. In exchange, the prosecutor dismissed the remaining counts.

On March 27, 2013, with new counsel, defendant filed a motion to withdraw his plea. The trial court denied the motion on May 13, 2013.

On May 29, 2013, at the sentencing hearing, the court imposed the two-year low term as to count 7, and doubled it to four years pursuant to the prior strike. The court then imposed various fines and fees and awarded defendant 424 actual days of presentence custody credit plus 424 days of conduct credit.

On June 11, 2013, defendant filed a notice of appeal. The court, however, denied defendant's certificate of probable cause, and the notice was deemed inoperative.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise specified.

<sup>2</sup> Codefendant Videll Collins was charged in counts 1 through 6, in addition to various allegations. He is not a party to this appeal.

On July 5, 2013, defendant filed a timely amended notice of appeal based on the sentence or other matters occurring after the plea that do not affect the validity of the plea.

### **STATEMENT OF FACTS**

On December 11, 2012, at the change of plea hearing, defendant acknowledged that: (1) he signed page three of the three-page change of plea form; (2) he initialed the boxes; (3) before signing and initialing the form, he went over the form with defense counsel; and (4) he understood everything on the form.

The trial court then asked defendant whether he understood that by entering the plea, he was not going to have a preliminary hearing or trial by jury. Defendant responded, “Yes.” The court informed defendant that he had the right (1) to be represented by an attorney at all stages of the proceedings; (2) to present evidence; (3) to cross-examine witnesses; (4) to subpoena his own witnesses; and (5) to remain silent. The court asked defendant whether he was willing to waive those rights and go forward with his plea. Defendant responded, “Yes.”

After the prosecutor made a motion to amend the Information to add count 7—possession of a controlled substance for sale—the court addressed defendant and informed him that he was going to be pleading to the amended count and admitting his prior strike. The court indicated that defendant would receive the low term of two years, doubled to four years, and asked whether that was defendant’s understanding. Defendant replied, “Not my understanding for the sales part, no.” The court noted that the plea

agreement stated, “possession or purchase for sale.” Defendant then responded, “Okay.” The court then repeated, “possession for sale,” to which defendant replied, “I understand that.” The court went on to explain that defendant would be pleading guilty to a violation of Health and Safety Code section 11351, and he would be getting the low term of two years, and asked if that was defendant’s understanding. Defendant responded, “Yes, sir.” The court said, “Then when you admit the strike, that doubles that to four.” Defendant again stated, “Yes, sir.” The court said, “Is that your understanding of the plea agreement?” Defendant replied, “Yes, sir.”

The court went on to ask, “Other than what I just explained to you here in court, has anyone promised you anything else such as a lesser sentence, reward, or immunity?” Defendant replied, “No.” The court also asked, “Have you been threatened with force or violence to cause you to enter this plea.” Defendant replied, “No.” Thereafter, defendant replied, “No,” again when asked whether he was under the influence of any alcohol, drugs, narcotics or other medications. Defendant also indicated that he had enough time to discuss his case with his attorney.

Defense counsel then stated that she was satisfied that defendant understood the plea bargain form; she went over everything with him; and she joined in his waiver.

All parties stipulated that the court could consider the felony complaint as an information, and there was a factual basis for the plea based on the police reports, crime lab analysis, and records of prior conviction.

Defendant then entered a no contest plea to count 7, possession or purchase for sale of a controlled substance, cocaine. Defendant indicated that he understood that “a no contest plea has the same effect in the criminal law as a plea of guilty.” Defendant admitted that he was previously convicted for violating former section 12031, subdivision (a)(2)(C), on May 10, 2007. On the prosecutor’s motion, the court dismissed “all the remaining counts and allegations pursuant to the terms of the plea.” The court then found that the plea satisfied the requirements under *Boykin-Tahl*<sup>3</sup> and indicated that “[t]here is a factual basis for the plea.”

Two months later, on February 21, 2013, the trial court relieved defense counsel and defendant retained new private counsel, Victor Marshall.

On March 27, 2013, defendant, through his new counsel, filed a motion to withdraw his plea. Defendant alleged that he (1) was unaware he was pleading to possession for sale of a narcotic substance; (2) was unaware that he could have defended himself and unaware of the possible defenses; (3) was unaware that the statutory range of punishment greatly increased because of his prior strike; and (4) did not know in 2007 that future felonies would be subject to greater punishment. Defendant also claimed that all theories and alternatives should have been explained to him about the past strike, and the *Tahl* waiver in the 2007 case should have been examined by means of a motion under *People v. Sumstine* (1984) 36 Cal.3d 909, where the court could determine that defendant did not plead freely and voluntarily.

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<sup>3</sup> *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122.

In his declaration, defendant additionally claimed that his attorney never showed him police reports and did not give him sufficient details about the charges, defenses, theories, or investigation; a series of lawyers in his case failed to discuss the case with him; and it was always his intention to admit that he was in possession of the substance for personal use.

On April 18, 2013, the prosecutor filed an opposition to the motion claiming that there was no basis for defendant to withdraw his plea in that he signed a plea agreement, entered into a plea, and “never once indicated to the Court that he did not understand any part of the plea.”

On May 13, 2013, at the hearing on the motion to withdraw the plea, the prosecutor called defendant’s previous defense counsel, Susan Slater, to testify about the negotiations in this case. Defendant waived his attorney-client privilege as to any communication with Slater prior to this point. Slater testified that when she spoke with defendant about the prior strike, he indicated that he was unaware he had a prior strike. She pulled the prior plea and confirmed that he did have a strike.<sup>4</sup> Defense counsel Slater tried to see if there was a way the strike could somehow be withdrawn. Slater spoke with Judge Malone. The judge appointed another attorney, Stan Hodge, ad hoc, to determine

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<sup>4</sup> On December 16, 2013, defendant filed a letter request to deem his motion to augment as a request for judicial notice. On December 23, 2013, we deemed the letter to be a request for judicial notice and reserved ruling on the request for consideration with the appeal. These documents are the change of plea form and the reporter’s transcript from the change of plea hearing regarding defendant’s 2007 conviction. We hereby grant defendant’s request.

if anything could be done. Slater then made a motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, which was denied.

Slater testified that the case was negotiated over a series of dates, and when a disposition was reached, she went over and explained the change of plea form to defendant. Defendant informed Slater that he understood each item. She then discussed with defendant the charges and enhancements, how much time he was facing, and whether he wanted to risk going to trial. Slater testified that she did not pressure defendant; it was defendant's choice to take the deal. Slater testified that she "had worked out what I thought was pretty much the lowest that I was going to be able to get for him."

Slater testified that there was nothing unusual about agreeing to the plea deal. Defendant never indicated that he no longer wanted to take the deal. She did not recall him expressing any hesitancy about taking the deal. She testified that she went over the police reports with defendant.

Slater testified that she met with defendant a number of times to address his main concern—the fact that he had a prior strike. She estimated that she spent a couple of hours with him, and told him she was going to do everything she could to fight the strike. Slater spoke with the other appointed attorney, Hodge. He initially believed that he would be able to do something about the strike. However, after conducting research, "he discovered that he couldn't do anything about it . . ." Slater looked at the transcript of the

prior plea when she was preparing the *Romero* motion and she did “not believe that it says he was pleading to a strike” in the 2007 case.

Slater informed defendant that he would have to admit to a strike if he wanted to take the plea deal. She also informed defendant that he was going to be admitting to a sales charge, even though at the change of plea hearing defendant stated it was not his understanding that he was pleading to a possession for sales offense.

When questioned by defendant’s new retained counsel Marshall whether defendant’s plea to simple possession would have been another alternative to reach four years in prison by doubling the midterm, Slater responded that the prosecutor “was not willing to do that.”

Defendant testified. He recalled that he met with Salter four to five times for five or 10 minutes each visit. He did not recall whether Slater went over the police reports with him, and he was never handed a copy of the reports. Steve, the investigator, showed defendant the time in prison defendant was exposed to for the charges. Defendant testified that he was aware the police found cocaine in his vehicle.

Defendant testified that the first time he was aware he had been convicted of a strike was after he was arrested on this case when Slater informed him. Defendant testified that he understood what Slater was telling him, but he asked her to file a motion about the prior strike; she never did. She told him there was “nothing else she could do.” Defendant testified that he felt misled; that he was going back and forth to court for 11 months and thought he was going to get out of custody any day. He was being told the

strike was not going to be used against him, and then he was told the offer was four years at 80 percent. He felt pressured to take the deal because he was facing 22 years if he did not. Defendant therefore took the deal rather than go to trial.

Defendant testified that he was given the *Boykin-Tahl* advisements and decided to give up his rights because he felt pressured. He testified that Slater told him the prior strike was unconstitutional. She said she did not know how to fight the strike, and that was when the trial court appointed Hodge. Defendant testified that he was concerned about how admitting the sales charge would affect him in the future, and they never went over any defenses to fight the charge as “[i]t was all about the strike.”

On cross-examination, defendant reiterated that he thought he was going to get out any day because Salter told him she was not going to let them use a strike against him that he was not “intelligently or voluntarily aware of.” Defendant was aware that he was charged with other offenses, but Slater had told him that if he did not have a strike, “I would go home.” Defendant testified that Hodge explained that he had done some research and determined that the strike was a good one. Defendant testified that he repeatedly told his attorneys to file a *Sumstine* motion, but such a motion was never filed.

Defendant remembered signing the plea form in this case and initialing the boxes. He, however, felt pressured. He kept telling Slater it was not right; it was not a good plea for him; he wanted to go home; he wanted a drug program; and he was charged with a strike he did not understand. Defendant acknowledged that Slater told him there was a risk of going to trial, but they never discussed his defenses.

Defendant testified that at the change of plea hearing, he was disheveled; he was breaking out in a sweat; and he was not in his right frame of mind. There was nothing he could do but take the deal or get 22 years. He, however, acknowledged that he had never verbalized to the judge that he did not want to take the plea.

After the end of the testimony and argument from counsel, the court noted that defendant had cited *People v. Stanworth* (1974) 11 Cal.3d 588, 612, in his written motion to withdraw his plea. Referencing *Stanworth*, the trial court found that “there was no ignorance of relevant or material facts regarding defense counsel.” The court noted that Judge Malone had appointed Hodge, “a second counsel to look into whether or not he had a viable option to move to strike the prior, prior to taking the plea.” The court said it had reviewed the change of plea hearing, and noted while the prior judge did not inquire into the issue of a package deal, it did not result in any psychological pressure or prejudice, as to whether defendant felt pressured to take the deal. The court noted, in fact, that codefendant had gotten a much longer sentence of 16 years and eight months. The court then determined: “The court would have to find the allegations, if true, overcame the defendant’s exercise of free judgment by clear and convincing evidence, and the standard is not met, and the motion to withdraw the plea is denied.”

### **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, but he has not done so. 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.

**DISPOSITION**

The judgment is affirmed.

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RICHLI  
Acting P. J.

We concur:

KING  
J.

MILLER  
J.