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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.

JULIAN CHRISTOPHER RAMON,

Defendant and Appellant.

E060665

(Super.Ct.No. FVI1201089)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Anita P. Jog, under appointment by the Court of Appeal, and Julian Christopher Ramon., in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Julian Christopher Ramon pled no contest to second degree robbery (count 1; Pen. Code, § 211).<sup>1</sup> Defendant additionally admitted he

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

committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)) and suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The court sentenced defendant to a determinate term of 14 years' imprisonment as agreed upon in his plea agreement.

After defendant's trial counsel filed the notice of appeal, this court appointed counsel to represent defendant. 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 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a statement of the facts, and identifying two potentially arguable issues: 1) whether the trial court abused its discretion in denying defendant's request to withdraw his plea; and 2) whether the issue can even be raised without a certificate of probable cause. We offered defendant an opportunity to file a personal supplemental brief, which he has done. Defendant contends his plea was the result of misadvisement by his trial counsel. We affirm.

## FACTS AND PROCEDURAL HISTORY<sup>2</sup>

On April 5, 2012, at approximately 9:33 p.m., police were dispatched in regard to a report of an armed robbery at a gas station. The victim reported he was walking to a gas station when he was approached by an individual, later identified as defendant's codefendant, Andrew Maldonado. Maldonado asked the victim for a cigarette. The victim said he did not have one and walked into the gas station. As he exited the gas

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<sup>2</sup> The parties stipulated the police reports, among other documents, would provide the factual basis for the plea. We derive our factual recitation from the police reports.

station, Maldonado approached him again and asked him for marijuana. The victim said he did not have any. At that moment, the victim noticed Maldonado was holding a pistol.

Meanwhile, defendant was pumping gas into a blue pickup truck. When he finished, he drove over to the victim. Defendant exited the truck and approached the victim. Defendant asked the victim what he had on him. The victim responded that he had nothing. Maldonado then struck the victim on the back of his neck with the handgun causing him to fall on the ground. Defendant and Maldonado started punching and kicking the victim in the torso while he was down. They took the victim's cell phone, driver's license, and clinic ID card.

Maldonado then pointed the handgun between the victim's eyes. Maldonado hit the victim in the forehead with the barrel of the gun. Defendant walked around to the bed of the pickup truck from which he removed what the victim believed to be a shotgun. Defendant said he wanted to kill the victim. Defendant pointed the shotgun at the victim and threatened to kill him. Defendant pushed the victim's head down with the barrel of the shotgun. Defendant and Maldonado started arguing over who was going to kill the victim. Defendant kept telling Maldonado, "let me do it."

Maldonado told defendant to get back in the truck. Defendant got back in the truck and drove away. The victim sustained a fresh laceration to the back of his neck and a small circular mark on his forehead between his eyes. From the victim's description of the suspects and the truck, a deputy was able to provide detectives with a possible suspect address. Defendant was found to be the registered owner of a blue pickup truck. Officers

obtained a search warrant for two parole addresses listed for defendant. At one address, officers found the truck which was full of gang related materials.

The victim identified defendant from a photographic lineup. The gas station had surveillance video which the victim watched and from which he identified the defendant, Maldonado, and the truck. When defendant was arrested, he was found to have numerous “South Fontana,” a criminal street gang, tattoos on his chest, stomach, back, and head.

The People charged defendant by felony complaint with second degree robbery (count 1; § 211), criminal threats (§ 422), possession of a firearm by a felon (count 3; § 29800, subd. (a)), and street terrorism (count 5; § 186.22, subd. (a)). The People additionally alleged that in the commission of the count 1 offense, a principal personally used a firearm (§ 12022.53, subs. (b)(1) & (e)(1)); that in his commission of the count 2 offense, defendant personally used a firearm (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)); and that defendant committed counts 1, 2, and 3 for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). The People further alleged defendant suffered a prior strike conviction (§§ 667, subs. (b)-(i), 1170.12, subs. (a)-(d)), had suffered a prior serious felony conviction (§ 667, subd. (a)(1)), and had suffered three prior prison terms (§ 667.5, subd. (b)).

On May 11, 2012, the court appointed defendant a public defender. On September 17, 2012, the public defender was relieved as defendant had retained a private attorney. On May 16, 2013, the date set for the preliminary hearing, the court asked defendant if he understood the People were offering a deal of 14 years’ imprisonment when he was

facing potential exposure to 37 years' imprisonment. The parties asked for time to discuss the matter. The court granted a recess. When the parties returned, the court took defendant's plea.

The court specifically asked defendant if he was willing to change his plea from not guilty to no contest to count 1, admit the gang enhancement, and admit the prior strike conviction in return for a 14-year term of imprisonment. Defendant responded that he was. The court went over all of defendant's constitutional rights and inquired whether the plea was being entered into knowingly and voluntarily. The court, again, explained that upon entering the plea, defendant would receive a 14-year term of imprisonment. Defendant indicated he understood and agreed.

The court asked if "anyone promised or suggested to you that you would receive a lighter sentence, probation, reward, immunity, or anything else to get you to plead guilty or no contest as indicated?" Defendant responded, "No." The court asked if defendant "had sufficient time to consult with your attorneys concerning your intent to plead . . . no contest to the above charges and the admission of the prior convictions or enhancements? And have your lawyers explained everything on this declaration to you? And have you had sufficient time to consider the meaning of each statement? And have you personally placed your initials in certain boxes on this declaration to signify that you fully understand and adopt as your own each of the statement which correspond to those boxes?" Defendant responded "Yes." Defendant's plea agreement, which appears to bear his initials and signature, expressly indicated defendant would receive a 14-year term of imprisonment upon entry of the plea.

On August 2, 2013, the court granted defendant's motion to have the public defender reappointed with the expectation that she would file a motion to withdraw the plea. On January 24, 2014, after a number of continuances, defense counsel informed the court defendant "still wishes to withdraw his plea. As I indicated at the last hearing, I have investigated the matter and found that there's no legal cause to withdraw the plea." The court responded, "[Y]our review of the transcript of the . . . plea bargain indicates that there is no legal cause in that?" Defense counsel replied, "Correct. I've also investigated the matter. I've spoken with [defendant's prior retained counsel], I have interviewed [defendant]. There's simply nothing more that I can do but – so from my position there's no legal cause why he cannot be sentenced. It's just over [defendant's] objection."

Defendant's "objection is simply that he wants to continue to pursue to withdraw his plea." The court noted, "There's no legal basis." Defense counsel reiterated "I've investigated the matter and there's simply no legal basis."

When permitted to address the court, defendant stated, "My legal cause is my lawyer. I was under the impression – I don't agree to sign for 14 years. I was under the impression that I was signing for 11 years at 80 percent. He was coercing me into – telling me that I was signing for 11 years." "I didn't agree to sign for 14 years, your Honor."

The court observed the face of the plea bargain reflects a total term of 14 years in state prison. The court noted, "I don't take a plea if I have any doubt, any equivocation on a defendant. I will not take a plea. I didn't have any problems with yours."

Defendant responded, “Your Honor, I was under the impression that I was signing for 11 years, your Honor.” The court replied, “I don’t know how you can say that when I clearly said it was 14.” The court then sentenced defendant to the term agreed upon in the plea bargain.

On February 7, 2014, defense counsel filed a notice of appeal challenging the validity of the plea or admission. Defense counsel requested a certificate of probable cause based on defendant’s contention his attorney had lied to him regarding the terms of the plea agreement. The court denied the request. On March 5, 2014, defense counsel filed an amended notice of appeal based on the sentence or other matters occurring after the plea.

#### DISCUSSION

Defendant’s contention he was misadvised by his trial counsel regarding the terms of his plea cannot be reviewed on appeal because it was the subject of his motion to withdraw the plea and he has not obtained a certificate of probable cause. (*People v. Johnson* (2009) 47 Cal.4th 668, 679 [“A defendant must obtain a certificate of probable cause in order to appeal from the denial of a motion to withdraw a guilty plea, even though such a motion involves a proceeding that occurs *after* the guilty plea. [Citation.]”].) Moreover, the record is clear that the court informed defendant repeatedly the plea agreement was for a 14-year term of imprisonment. Furthermore, the plea agreement, signed and initialed by defendant, reflects defendant’s entry of the plea was based on an agreement to a 14-year term of imprisonment. (*People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096 [The burden is on defendant to show good cause to

withdraw the plea and an appellate court will uphold the denial of a motion to withdraw a plea unless there is a clear showing of abuse of discretion. ““Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.” [Citation.]’ [Citation.]”.) (*Id.* at p. 1097.) Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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CODRINGTON  
\_\_\_\_\_ J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.