Filed 2/4/15 P. v. Horton CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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. ZACHARY HORTON, Defendant and Appellant.	E061486 (Super.Ct.No. FVI1303646) OPINION

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

Loleena H. Ansari, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Zachary Wayne Horton pled no contest to being a felon in possession of a firearm (count 1; Pen. Code, § 29800, subd. (a)).[1] Defendant

[1] All further statutory references are to the Penal Code unless otherwise indicated.

additionally admitted allegations he had suffered a prior strike conviction (§§ 667, subds. (b)-(e), 1170.12, subds. (a)-(d)) and committed the offense in count 1 for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(A)). The court sentenced defendant to an aggregate, determinate term of six years imprisonment as contemplated in his plea agreement.

After 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 and identifying seven potentially arguable issues: 1) whether the plea is constitutionally valid; 2) whether the court sentenced defendant in accordance with his plea agreement; 3) whether the court erred in declining defendant's request for a *Marsden*[2] hearing; 4) whether the traffic stop of defendant was valid; 5) whether the traffic stop of defendant was an impermissible pretext for searching defendant's vehicle; 6) whether the detention of defendant for a traffic infraction was unduly delayed; and 7) whether defendant's consent to search his vehicle was valid. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On November 7, 2013, at approximately 2:11 p.m., Officer Kevin Riberich conducted a traffic stop of defendant when defendant made a left turn out of a parking lot

[2] *People v. Marsden* (1970) 2 Cal.3d 118.

where a sign was located reading “right turn only.” Riberich pulled defendant over for failure to obey a traffic sign (Veh. Code, § 21461, subd. (a)).

Riberich asked defendant for his driver’s license, proof of insurance, and vehicle registration. Riberich smelled the odor of marijuana coming from both defendant and the vehicle. Defendant provided Riberich with his driver’s license, but could not produce proof of insurance or vehicle registration.

Riberich returned to his patrol vehicle and called defendant’s name over the radio. Detective Don Campas contacted Riberich and informed him that defendant was known to carry guns in his car. Campas had investigated defendant for a crime a year earlier when defendant was arrested for possession of two stolen handguns.

Campas drove to the location at which Riberich had stopped defendant in order to assist. Campas arrived at 2:23 p.m., approximately six to 12 minutes after Riberich’s radio call.

Campas asked defendant for permission to search the vehicle. Defendant consented. Campas located a loaded, black, semiautomatic handgun in the engine compartment of the vehicle next to the battery.

Campas retrieved handcuffs from Riberich in order to affect an arrest of defendant; however, defendant ran. Campas and other officers who had also responded to the scene engaged defendant in a foot pursuit. Officer Jeremy Vasquez repeatedly ordered defendant to the ground.

After approximately 10 minutes, defendant was apprehended after he had kicked out some wood paneling on a fence in order to gain access to a backyard. Defendant was

handcuffed and taken into custody. After waiving his *Miranda*[3] rights, defendant said he had procured the gun on the street a few days earlier for protection.

Police gang expert Josh Guerry testified at the preliminary hearing that he had reviewed gang cards from 2009, 2010, 2011, and 2012 in which it was recorded defendant had admitted membership in Rollin 60s.[4] On November 8, 2013, defendant was booked as an associate of Rollin 60s.

Guerry spoke with defendant, who indicated familiarity with Rollin 60s' apparel and rivals. Defendant bore Rollin 60s' gang tattoos and wore Rollin 60s' gang apparel. Defendant had previously been convicted of an offense in which he admitted an attached gang enhancement. Guerry opined defendant was an active member of Rollin 60s and the offenses with which he was charged were committed for the benefit of, at the direction of, or in association with Rollin 60s.

The People charged defendant by information with possession of a firearm by a felon (count 1; § 29800, subd. (a)); possession of ammunition by a prohibited person (count 2; § 30305, subd. (a)(1)); carrying a loaded firearm by a person with a prior conviction (§ 25850, subd. (a)); and two counts of resisting, obstructing, or delaying of a peace officer (counts 4 & 5; § 148, subd. (a)(1)) as to, respectively, Campas and Vasquez. The People additionally alleged defendant had committed the offenses in counts 1

---

[3] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

[4] The parties stipulated Rollin 60s is a criminal street gang. The parties agreed the factual basis for defendant's plea was contained in the police report, the preliminary hearing, and the file from defendant's prior strike case.

through 3 for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(A)). The People also alleged defendant had suffered two prior prison terms (§ 667.5, subd. (b)) and a prior strike conviction (§§ 667, subds. (b)-(e), 1170.12, subds. (a)-(d)).

On April 2, 2014, defendant filed a motion to suppress the evidence against him. The People filed opposition. Riberich and Campas testified at the hearing on the motion to suppress. Defense counsel stipulated the traffic stop was not pretextual: "It wasn't a pretext. We will stipulate that an illegal left turn is grounds to be pulled over for a traffic violation."

The court found the stop was not pretextual, that defendant's detention was not "unduly delayed," and that defendant consented to the search of the vehicle, and "[o]nce you have permission to search the car, I think that includes permission to search under the hood . . . ." The court denied the motion to suppress.

On June 23, 2014, the court ordered count 5 dismissed pursuant to the People's motion. After an unreported conference held in chambers, defense counsel noted, "At this time your Honor, [defendant] is not willing to a accept the offer of six years, state prison, 85 percent." Defendant stated, "I want a Marsden motion." The court noted, "Your Marsden is not timely. I have a jury coming in at 1:30. [Defense counsel] is a very experienced lawyer." The court observed defendant was facing a total possible exposure of 14 years four months incarceration for which he would be required to serve 85 percent of the time.

A discussion was held off record. A recess was then taken. Upon return from the recess, defendant had signed and initialed a plea agreement, the terms of which reflected defendant would plead no contest to count 1 and admit the attached gang enhancement and prior strike conviction. In return, all remaining counts and allegations would be dismissed and defendant would be sentenced to six years' incarceration.

Defendant initialed the boxes adjacent to the provisions of his plea agreement informing him of his rights and the consequences of his plea. Defendant initialed the box next to item No. 19, a statement reflecting he had had sufficient time to consult with his attorney regarding the plea and that his attorney had explained everything in the agreement to him. Defendant signed the plea agreement. Defense counsel signed the plea agreement reflecting he had "personally read and explained the contents of the" agreement to defendant.

The court again explained defendant's total prison exposure as charged under the information. The court asked if defendant understood he would be admitting a strike and gang enhancement and the additional terms of imprisonment that would entail. Defendant responded he understood.

The court asked if defendant understood his constitutional rights to a speedy public trial by a jury or judge, his right to be represented, his right to present evidence, his right to hear witnesses against him, and his right to remain silent or testify. Defendant stated he understood his rights. Defendant agreed to waive his constitutional rights.

Defendant agreed defense counsel had explained all consequences of the plea. No other promises had been made. Defendant confirmed he was under no threat of force,

violence, menace, or duress to enter the plea. Defendant affirmed no mental insufficiency prohibited him from understanding the consequences of the plea.

The court inquired, "Have you had sufficient time to consult with your attorney concerning your intent to plead no contest to the above charge and your admission to your prior convictions and enhancement?" Defendant responded, "Yes." The court asked, "Has [defense counsel] explained everything on this declaration and have you had sufficient time to consider the meaning of each statement.?" Defendant responded, "Yes."

The court asked if defendant had "personally placed your initials [] on certain boxes on this declaration to signify that you fully understand and adopt as your own each of the statements which correspond to those boxes?" Defendant responded, "Yes." Defendant entered his plea.

The court found defendant understood and waived his constitutional rights, had read and understood his plea agreement and its consequences, had personally entered his plea freely and voluntarily, and that a factual basis for the plea exists. The court sentenced defendant to the midterm of two years on count 1, doubled pursuant to the prior strike conviction, plus a consecutive term of two years for the gang enhancement for an aggregate term of six years imprisonment as denoted in the plea agreement. The court awarded defendant 88 days of total credit; however, the court later amended the award to 456 days.

DISCUSSION

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 independently reviewed the record for potential error and find no arguable issues. (*People v. Marlow* (2004) 34 Cal.4th 131, 147 [constitutional validity of plea reviewed under totality of the circumstances]; *People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1412 ["[A] trial court does not abuse its discretion if the defendant's [*Marsden*] motion is untimely and would result in '"disruption of the orderly processes of justice unreasonable under the circumstances of the particular case."' [Citation.]"]; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1226, fn. 1, 1227 [Nine minute detention to confirm registration of vehicle not unduly prolonged.]; *United States v. Drayton* (2002) 536 U.S. 194, 197 [Consent to officers' request to search valid provided a reasonable person would understand he is free to refuse.].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

KING
Acting P. J.

MILLER
J.