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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.

DONALD M. HWANG,

Defendant and Appellant.

E062639

(Super.Ct.No. FWV1400110)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brian S.

McCarville, Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A first amended information charged defendant and appellant Donald M. Hwang with (1) first degree burglary (Pen. Code, § 459; count 1);¹ (2) receiving stolen property (Pen. Code, § 496, subd. (a); count 2); (3) possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 3); (4) possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 4); possession of a firearm by a felon (Pen. Code, § 29800, subd. (a); count 5); and (6) possession of ammunition (Pen. Code, § 30305, subd. (a)(1); count 6).

The information also alleged three prior convictions as to count 3, possession for sale of methamphetamine: (1) October 16, 1992, Orange County case No. C96409, possession for sale of a controlled substance (Health & Saf. Code, § 11378); (2) July 3, 2007, Orange County case No. 07NF2407, transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)); and (3) November 21, 2012, San Bernardino County case No. FCH1200471, possession for sale of a controlled substance (Health & Saf. Code, § 11378). The information further alleged that defendant served a prior prison term for his November 21, 2012, conviction within the meaning of section 667.5, subdivision (b).

On May 30, 2014, defendant executed a change of plea form and pled guilty to counts 3, 4, 5 and 6, in exchange for a six-year prison sentence. At the hearing, when the

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

trial court asked defendant if he understood everything in the change of plea form, defendant responded, “Yes.” After indicating that defendant understood what rights he was giving up by pleading guilty, the court asked defendant if he had had enough time to discuss the case with his attorney. Defendant responded, “Yes, your Honor.” Later on the same day, the court dismissed defendant’s remaining counts and allegations. The court thereafter sentenced defendant to the upper term of four years on count 4, with consecutive one-third the midterm of eight months for counts 3, 5 and 6.

On November 20, 2014, defendant filed a petition to recall his sentence under section 1170.18 in accordance with Proposition 47. On December 5, 2014, the court found defendant ineligible for resentencing under section 1170.18 and denied the petition. On December 29, 2014, defendant filed a timely notice of appeal from the court’s denial of his petition.²

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. On April 21, 2015, counsel filed a brief under the authority of *People v. Wende* (1975) 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 the court to undertake a review of the entire record.

² On March 10, 2015, defendant filed a petition for writ of habeas corpus (case No. E063031) alleging ineffective assistance of counsel (IAC), which we ordered considered with this appeal. We resolve that petition by separate order.

We offered defendant an opportunity to file a personal supplemental brief. On May 5, 2015, defendant filed a 12-page typewritten supplemental brief with exhibits. In his brief, defendant contends that his trial counsel rendered IAC. Moreover, defendant appears to be contending that the arresting officers violated his rights under the Fourth, Fifth and Sixth Amendments of the United States Constitution.

In this case, defendant filed a “notice of appeal following petition for resentencing.” Hence, defendant’s appeal appears to be limited to the issues pertaining to the petition for resentencing. Defendant’s personal brief does not address the resentencing hearing. Instead, the brief addresses the validity of his guilty plea to his substantive offenses. Defendant, however, failed to obtain a certificate of probable cause. “[W]hen a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) In addition, “section 1237.5 authorizes an appeal [following a guilty plea] only as to a particular category of issues,” and to have these issues considered on appeal, a defendant must first take the additional procedural step of obtaining a certificate of probable cause. (*Id.* at p. 650.) Here, the issues raised in

defendant's supplemental brief concern the determination of guilt or innocence, and are therefore not cognizable. (*Id.* at p. 649.)

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 error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

KING
Acting P. J.

CODRINGTON
J.