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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.

TYLENE GENELL HOLMES,

Defendant and Appellant.

E062801

(Super.Ct.No. RIF1411851)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Tylene Genell Holmes, in pro. per.; and Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

STATEMENT OF THE CASE

On August 29, 2014, a felony complaint charged defendant and appellant Tylenne Genell Holmes with first degree burglary of an inhabited house under Penal Code¹ section 459 (count 1); second degree burglary of a motor vehicle/mail truck under section 459 (count 2); receiving stolen property, United States Post Office mail under section 496, subdivision (a) (count 3); and petty theft with priors under section 484, subdivision (a). The complaint also alleged that defendant suffered five prison priors within the meaning of section 667.5, subdivision (b). Defendant pled not guilty and denied the special allegations.

On November 25, 2014, defendant withdrew her not guilty plea and entered into a stipulated sentence plea agreement. Defendant pled guilty to count 2, motor vehicle burglary, in exchange for a dismissal of the other counts and enhancement allegations. The parties agreed that Proposition 47 would not apply and that defendant would receive the upper term of three years (two years in custody, one year in mandatory supervision). Defendant was sentenced on December 3, 2014, to the agreed upon term of three years, and received 39 days of actual custody, plus 38 days of section 4019 credit, for a total of 77 days presentence custody credit.

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

On January 27, 2014, defendant filed her first notice of appeal indicating a challenge to the validity of the plea as grounds for appeal. The court denied defendant's request for a certificate of probable cause.

On February 3, 2015, defendant filed a second notice of appeal indicating once again a challenge to the validity of the plea as grounds for appeal and requested another certificate of probable cause. The court denied the request on February 4, 2015. On February 5, 2015, defendant filed her third notice of appeal indicating a challenge to the sentence as grounds for appeal.

II

STATEMENT OF FACTS

Defendant admitted that on or about August 27, 2014, she willfully and unlawfully entered a motor vehicle, to wit, a United States mail truck, the doors of said truck being locked, with the intent to commit theft.

III

ANALYSIS

After defendant appealed, and upon her request, this court appointed counsel to represent her. 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, and she has done so. On May 14, 2015, defendant filed a three-page handwritten brief. In her

brief, it appears that defendant is arguing that she should never have been charged with first degree burglary under section 459 (count 1) so that she could have received a more lenient sentence and/or qualified for a treatment or recovery program when she pled guilty to second degree burglary under section 459 (count 2).

In this case, defendant pled guilty. “[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.’ [Citations.]” (*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.)

Furthermore, defendant requested a certificate of probable cause to appeal, but her request was denied by the trial court. “[W]here, as here, a certificate of probable cause has been denied, the appeal is not operative and the denial of the certificate must be reviewed by writ of mandate.” (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188.) Defendant did not challenge the denial by way of writ of mandate, so she is precluded

from obtaining review on the merits of issues challenging the legality of the proceedings and/or the validity of her plea. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1096-1097.)

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 error.

IV
DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.