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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.

FREDERICO FLORES LOPEZ,

Defendant and Appellant.

E062916

(Super.Ct.No. RIF1201036)

O P I N I O N

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

Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On August 2, 2012, defendant and appellant Frederico Flores Lopez pled guilty to one count of transporting methamphetamine. (Health & Saf. Code, § 11379, subd. (a); count 1.) Defendant additionally admitted an allegation that the amount of

methamphetamine exceeded a specific volume and weight in violation of Health and Safety Code section 11370.4, subdivision (b)(2). Pursuant to his plea agreement, the court sentenced defendant to an aggregate term of five years' incarceration, two years of which were suspended when, upon his release, defendant would be placed on mandatory supervision.

On December 3, 2014, defendant filed a petition requesting his offense be reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b).¹ On December 24, 2014, the court denied defendant's petition. Defendant filed a notice of appeal. After counsel from Appellate Defenders, Inc. filed an amended 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, setting forth a statement of the case and identifying two potentially arguable issues: (1) whether this court should remand the matter for redetermination and reconsideration of relief under section 1203.41 since his mandatory supervision was set to expire in February 2015; and (2) whether this court should treat the appeal as a petition for writ of habeas corpus and remand the matter pursuant to section 1260. We affirm.

I. FACTUAL AND PROCEURAL HISTORY

On July 25, 2012, the People charged defendant by felony complaint with transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a), count 1) and the unlawful possession of methamphetamine (Health & Saf. Code, § 11378, count 2). As to

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

each count, the People alleged the amount of methamphetamine exceeded a specific volume and weight. (Health & Saf. Code, § 11370.4, subd. (b)(2).)

On August 2, 2012, defendant executed a plea agreement providing he would plead guilty to count 1 and admit the attached enhancement in exchange for a five-year aggregate jail term, the last two years of which would be suspended when, upon release from custody, he would be placed on mandatory supervision pursuant to section 1170, subdivision (h). Defendant signed the agreement indicating he had read and understood the entire document. Defense counsel also signed the agreement indicating he was satisfied defendant had an adequate opportunity to discuss the case with him and that defendant understood the consequences of the plea. Defendant initialed a provision of the agreement providing: “If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

On the same date, the court inquired whether defendant had an opportunity to discuss the case with his attorney and whether he was satisfied with the advice he received. Defendant said he had and was. The court asked if defendant filled out the plea form, understood each of the rights he initialed, and was willing to give up those rights to enter the plea. Defendant responded affirmatively. Defendant orally admitted on the record the factual basis for the offense and enhancement.

On August 22, 2012, the court sentenced defendant pursuant to his plea agreement. On August 6, 2013, defendant filed a petition for termination of his

mandatory supervision pursuant to section 1203.3. Defendant declared he was being held by the Department of Homeland Security, Immigration and Custom Enforcement for removal and deportation proceedings. On August 26, 2013, the court denied the petition.

On November 13, 2013, defendant filed a motion to vacate his conviction asserting his defense counsel had been constitutionally ineffective for failing to research the immigration consequences of his plea, advise him of those consequences, and/or achieve a plea agreement which would minimize any adverse immigration consequences. Defendant waived his presence at any hearing on the matter. The People filed opposition on December 2, 2013. On December 13, 2013, the court took the matter off calendar on the People's motion when no one appeared on behalf of defendant.

On March 10, 2014, defendant filed another petition for termination of his mandatory supervision based upon a nearly identical declaration as that contained in his previous petition. On March 18, 2014, the People filed a request for ruling arguing that early termination pursuant to section 1203.3 was not appropriate because the court sentenced defendant pursuant to section 1170, subdivision (h).² On March 20, 2014, a deputy public defender appeared on behalf of defendant and requested the matter be taken off calendar. The court granted the request.

On April 15, 2014, defendant filed another petition for termination of his mandatory supervision containing a nearly identical declaration as those in his previous

² Sections 1170, subdivision (h)(5)(B) and 1203.3, subdivision (a) explicitly give the court authority to revoke, modify, or change the conditions of a defendant's mandatory supervision.

two petitions. On April 22, 2014, the People filed another request for ruling, again asking the court to deny the petition because defendant had been sentenced pursuant to section 1170, subdivision (h). On April 25, 2014, a deputy public defender appearing on behalf of defendant requested the matter be taken off calendar. The court granted the request.

On June 4, 2014, defendant filed a motion for modification or termination of “probation” pursuant to sections 1203.3 and 1203.4. Defendant again asserted ineffective assistance of counsel based on his defense counsel’s purported failure to advise him of the immigration consequences of his plea. Defendant maintained he had been released from custody in February 2013. Defendant requested modification or termination of the terms of his “probation” “in order to qualify for . . . immigration relief.” On June 11, 2014, the People filed a request for ruling noting that early termination would not be appropriate because the court sentenced defendant pursuant to section 1170, subdivision (h). On June 13, 2014, the court denied defendant’s petition finding sections 1203.3 and 1203.4 inapplicable to defendant’s case because the court had sentenced him pursuant to section 1170, subdivision (h).

On July 10, 2014, defendant filed a petition for dismissal pursuant to sections 17, subdivision (b), 1203.3, and 1203.4. Defendant attached a nearly identical declaration to those contained in three previous filings. On July 11, 2014, the People filed a request for ruling noting that because the court had not granted defendant probation, relief pursuant to sections 1203.3, and 1203.4 was inapplicable. The People also indicated that section

17, subdivision (b) relief was unavailable because defendant's conviction was not punishable as a misdemeanor. On July 16, 2014, the court denied the petition noting: "This petition was previously denied on [June 13, 2014]."

On December 3, 2014, defendant filed another petition for dismissal pursuant to sections 17, subdivision (b), 1203.3, and 1203.4. On December 22, 2014, the People, again, noted defendant was not entitled to relief under sections 17, subdivision (b), 1203.3, or 1203.4. On December 24, 2014, the court denied the petition noting: "Defendant has not completed mandatory supervision."

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. 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.

III. DISPOSITION

The judgment is affirmed.

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KING
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.