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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.

BENJAMIN PATRICK LEE,

Defendant and Appellant.

E062961

(Super.Ct.No. SWF1402228)

OPINION

APPEAL from the Superior Court of Riverside County. Elaine M. Kiefer, Judge.

Affirmed.

Benjamin Patrick Lee, in pro. per.; and Laurel Simmons, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a negotiated plea agreement, defendant and appellant Benjamin Patrick Lee pled guilty to driving with a blood alcohol level greater than 0.08 percent (Veh. Code, § 23152, subd. (b)). He also admitted that he had suffered three prior

violations for driving under the influence (DUI) of alcohol in violation of Vehicle Code section 23152, subdivision (a); and that he had previously been convicted of a prior felony strike conviction (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). In return, the remaining charges and allegations were dismissed and defendant was sentenced to a stipulated term of four years in state prison with credit for time served. Defendant appeals from the judgment, challenging the sentence or other matters occurring after the plea as well as the validity of the plea and admissions. We find no error and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND¹

While stopped at a red light, on September 19, 2014, two California Highway Patrol (CHP) officers observed a pickup truck with an expired vehicle registration tag from the year 2001 and an officer initiated a traffic stop. Defendant stopped and exited his vehicle. The officer ordered defendant to reenter his vehicle, but defendant failed to comply. As defendant moved toward the officer, defendant appeared to be intoxicated and the officer smelled the odor of alcohol emitting from defendant's person. The officer asked defendant for identification; however, defendant refused and became argumentative with the officer. Defendant was also asked multiple field sobriety questions, but only answered a few questions, and refused to perform any field sobriety tests.

¹ The factual background is taken from the probation report.

Defendant was eventually arrested and transported to the Southwest Detention Center where he refused to submit to a breath test. Defendant stated that he would not participate in any chemical examinations. Defendant was then transported to a CHP office where he again refused to comply with any chemical tests. Eventually, a judge issued a warrant for a nonconsensual blood draw. The results of defendant's blood sample showed a blood alcohol concentration level of 0.14 percent.

On October 24, 2014, a felony complaint was filed charging defendant with DUI with three prior convictions for DUI (Veh. Code, §§ 23152, subd. (a), 23550.5, subd. (a); count 1); driving with a blood alcohol level of greater than 0.08 percent with three prior convictions for DUI (Veh. Code, §§ 23152, subd. (b), 23550.5, subd. (a); count 2); and driving on a suspended license (Veh. Code, § 14601.2, subd. (a); count 3). The complaint also alleged that defendant had suffered one prior prison term (Pen. Code, § 667.5, subd. (b)) and one prior felony strike conviction, to wit, a robbery (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)).

On January 9, 2015, defendant entered into a negotiated plea in exchange for a stipulated term of four years in state prison. He pled guilty to count 2 and admitted that he had suffered three prior violations for DUI and one prior felony strike conviction. After directly examining defendant, the trial court found that defendant understood the nature of the charges and the consequences of the plea; that the plea was entered into voluntarily, knowingly, and intelligently; and that there was a factual basis for the plea.

On February 9, 2015, defendant was sentenced in accordance with his plea agreement and awarded 288 days credit for time served.

On March 6, 2015, defendant filed a notice of appeal and request for certificate of probable cause, challenging the sentence or other matters occurring after the plea as well as the validity of the plea. On March 12, 2015, the trial court granted defendant's request for certificate of probable cause.

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. 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 conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his five-page supplemental brief, defendant makes assertions relating to his sentence, the use of his priors, the purported delay in arraigning him, and the facts of the underlying prior robbery conviction. He argues that his sentence was unfair in light of the fact that no persons were injured or property was damaged and without significant factors in aggravation. He also ostensibly claims that it was improper to use his prior convictions to elevate his conviction to a felony and to impose a double term.

We reject defendant's claims for several reasons. First, defendant waived his right to appeal. In *People v. Panizzon* (1996) 13 Cal.4th 68, our Supreme Court held that a defendant can waive his rights through a waiver form and the court can rely on that form in lieu of providing personal admonishments unless “ ‘the trial court has reason to believe the defendant does not fully comprehend his rights, [in which case,] the trial court [must] conduct further canvassing of the defendant to ensure a knowing and intelligent waiver of rights.’ [Citation.]” (*Id.* at p. 83.) Here, in his plea form, defendant initialed, “As part of this plea, I (circle one) do/do not waive any right to appeal that I may have.” “[D]o” was circled. At the change of plea hearing, the trial court examined the plea form with defendant and informed defendant of his rights. Defendant indicated that he understood the plea form, his rights, and the consequences of his plea; and that he had initialed and signed the plea form after consulting his attorney. The record shows that defendant intelligently, knowingly and voluntarily entered his waiver of his right to appeal. (*People v. Panizzon, supra*, 13 Cal.4th at pp. 83-84.)

Second, defendant is estopped from complaining about his sentence. (*People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Couch* (1996) 48 Cal.App.4th 1053, 1056-1058.) “The rule that defendants may challenge an unauthorized sentence on appeal even if they failed to object below is itself subject to an exception: Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that

defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process.”

(*People v. Hester, supra*, 22 Cal.4th at p. 295.) Defendant received the benefits of his bargain and the People are entitled to its benefits too. Defendant cannot be allowed to trifle with the courts.

Finally, the use of defendant’s three prior DUI convictions and his prior felony strike conviction were properly used to enhance his penalties and to elevate his current DUI conviction to a felony. (See *People v. Coronado* (1995) 12 Cal.4th 145, 151-153, 156-159 [prison term could be used to support one-year prison term enhancement, even though it resulted from felony drunk driving conviction that was used to elevate current drunk driving conviction to felony, and use of prior conviction and resulting prison term for elevation and sentence enhancement did not violate prohibition against multiple punishment of act or omission]; *People v. Doyle* (2013) 220 Cal.App.4th 1251, 1258-1260 [prior DUI manslaughter conviction could be used both to elevate current DUI to a felony and to serve as a strike under the Three Strikes law]; *People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1518-1520 [same prior robbery conviction could be used to elevate petit theft to felony, to invoke double sentencing provisions of Three Strikes law, and to impose statutory prior prison term enhancement; such multiple use did not violate double jeopardy; and Penal Code section 654 statute prohibiting double punishment for single act or omission did not require stay of prior prison term enhancement].)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

MILLER

J.

CODRINGTON

J.