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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.

DAMIEN LAMONT ALLEN,

Defendant and Appellant.

E064727

(Super.Ct.No. FSB1502115)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone, Judge.

Affirmed.

Trenton C. Packer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On June 18, 2015, a complaint charged defendant and appellant Damien Lamont Allen with one count of conspiracy under Penal Code¹ section 182, subdivision (a)(1). The complaint also alleged that defendant committed the act “for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further or assist in criminal conduct by gang members,” pursuant to Penal Code section 186.22, subdivision (b)(1)(A). The complaint further alleged that defendant: (1) committed robbery in Riverside County in 1995, a serious or violent felony; (2) had seven prison priors under Penal Code section 667.5, subdivision (b); and (3) had two prior drug sales convictions under Health and Safety Code section 11370, subdivisions (a) and (c).

On August 4, 2015, an information charged defendant with one count of conspiracy under section 182, subdivision (a)(1). The information also alleged a gang enhancement under section 186.22, subdivision (b)(1)(A). On September 1, 2015, defendant filed a motion to dismiss the information under section 995. On September 25, 2015, defendant withdrew the motion so he could enter a guilty plea.

On September 25, 2015, the prosecution orally amended the information to allege count 2, a violation of Health and Safety Code section 11378 (possession of a controlled substance for sale). The information was also orally amended to allege a prior serious or violent felony conviction based on a 1995 robbery conviction and a one-year prison prior based on a 1999 drug sales conviction. That same day, pursuant to a written plea

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

agreement, defendant pled guilty to count 2 under Health and Safety Code section 11378, and admitted the prior robbery conviction and prior drug sales conviction. In exchange, defendant agreed to a state prison term of five years. Pursuant to the plea agreement, the prosecution dismissed the gang enhancement. Moreover, as part of the plea agreement, defendant waived his right to appeal “from any motion I may have brought or could bring and from the conviction and judgment in my case since I am getting the benefit of my plea bargain.”

On September 25, 2015, the trial court accepted defendant’s plea, found that he knowingly and intelligently waived his rights, and sentenced defendant to five years in custody. The court also ordered fees and costs and awarded defendant custody credits. On October 23, 2015, defendant filed a timely notice of appeal. As part of that notice, he sought a certificate of probable cause because (1) there was evidence of “ineffective assistance of counsel due to the court erred in holding me to answer since there was insufficient evidence,” and (2) there was insufficient evidence for a holding order on the conspiracy count and attendant gang enhancement. On October 26, 2015, the court denied defendant’s request for a certificate of probable cause.

B. FACTUAL HISTORY

When defendant pled guilty, the parties agreed that the preliminary hearing transcript, police report, and information would form the factual basis for defendant’s guilty plea.

Defendant pled guilty to the charge of possessing a controlled substance for sale. He also admitted that he has a prior serious or violent felony and that he was previously

convicted of a nonstrike conviction, but did not remain free from custody for a period of five years.

DISCUSSION

After defendant appealed, and 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 to undertake a review of the entire record.

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 error.

DISPOSITION

The judgment is affirmed.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.