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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.

TERRELL LEON BILBREW,

Defendant and Appellant.

E065467

(Super.Ct.No. FWV1503995)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown, Judge. Affirmed.

Dawn S. Mortazavi, 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 Terrell Leon Bilbrew pled no contest to robbery (Pen. Code, § 211) and admitted that he had suffered one prior serious or violent felony strike conviction (Pen. Code, §§ 667, subd. (e)(1),

1170.12, subd. (c)(1)). In return, the remaining charge and enhancement allegation 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 based on the sentence or other matters occurring after the plea as well as the validity of the plea and admission. We find no error and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On October 22, 2015, Ontario Police Department Officer Michael Gracia responded to a report of a robbery at a Radio Shack located in the city of Ontario and was provided with a description of the suspect vehicle. Officer Gracia observed the suspect vehicle and followed it. Once backup officers arrived, Officer Gracia activated his patrol vehicle's overhead lights and siren and attempted to stop the vehicle. The vehicle, however, fled traveling up to 80 miles per hour on the 10 freeway, and a chase ensued. The vehicle exited the freeway and eventually came to a stop. Three occupants in the vehicle fled on foot.

While Ontario Police Department Officer Joseph Paterson followed the suspects, Officer Gracia searched the vehicle. Officer Gracia found a large trash bag filled with unopened smart phones, along with numerous smart phones on the floorboard of the vehicle.

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<sup>1</sup> The factual background is taken from the preliminary hearing.

With the assistance of the air unit, Officer Paterson followed the driver of the vehicle, later identified as defendant. Another officer and Officer Paterson eventually apprehended and arrested defendant. On the ground next to defendant, Officer Paterson found a black mask with a skull on it.

Ontario Police Department Officer Scott Jones responded to the Radio Shack and interviewed two employees. While speaking with the employees, Officer Jones was notified that some possible suspects had been arrested. One of the employees was taken to the two locations and identified two suspects, codefendants Montel Clay and Marvis Jackson. Video surveillance of the incident showed Clay and Jackson enter the Radio Shack with Clay entering first and Jackson second. After Jackson entered, Jackson locked the door. Clay then pulled out a handgun, cocked it, and ordered the employees on the ground. Clay and Jackson then ordered the employees to get up, to get to the back of the store, and had one of the employees place all the iPhones in a bag. Clay and Jackson also stole a cell phone, a Coach backpack and a tablet from one of the employees, and about \$417 from the cash register. Clay and Jackson thereafter fled in defendant's vehicle. Officers found approximately 160 various cell phones and tablets and cash in the amount of \$200.50 in defendant's vehicle.

Following a preliminary hearing, on November 10, 2015, an information was filed charging defendant with robbery (Pen. Code, § 211; count 1) and evading a police officer (Veh. Code, § 2800.2, subd. (a); count 3). As to defendant, the information further alleged that defendant had suffered one prior prison term (Pen. Code, § 667.5,

subd. (b)), and one prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On January 8, 2016, defendant entered into a negotiated plea agreement with the People. The document was filed on February 1, 2016. He pled no contest to robbery and admitted the prior strike conviction in exchange for a stipulated term of four years in state prison and dismissal of the remaining allegations. As part of the plea, defendant waived his right to an appeal. 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, freely, and intelligently; that defendant waived each of his constitutional rights; and that there was a factual basis for the plea. Despite submitting to the plea, defendant thereafter requested the court strike his prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). After the court denied the request, defendant was immediately sentenced in accordance with his plea agreement and awarded 118 days presentence credit for time served.

On March 3, 2016, defendant filed an amended notice of appeal and request for certificate of probable cause based on his sentence and counsel's failure to adequately argue his *Romero* motion. On March 7, 2016, the trial court denied 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 to 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 supplemental brief, defendant appears to argue: (1) his counsel was ineffective for failing to investigate the case and file various motions, such as a *Romero* motion and a Penal Code section 995 motion to dismiss following the preliminary hearing based on insufficient evidence;<sup>2</sup> (2) the trial court violated his constitutional rights in failing to sever the case; (3) there was insufficient evidence to support his robbery conviction; (4) the trial court erred in failing to grant his *Romero* request; and (5) an evidentiary hearing is required to determine the validity of his plea.

Defendant's notice of appeal included a request for a certificate of probable cause which was denied by the trial court. Without the certificate of probable cause,

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<sup>2</sup> We note that following testimony at the preliminary hearing, defendant's counsel objected to "any holding over [of defendant] based on insufficiency of the evidence." The trial court found sufficient evidence to believe all three defendants committed second degree robbery and held them to answer to the charge. The court also found sufficient cause to believe defendant committed the crime of evading an officer in willful disregard for safety.

constitutional, jurisdictional or other challenges to the validity or voluntariness of the plea is not permitted. (Pen. Code, § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1088.) Moreover, the record clearly indicates defendant was advised of, understood, and freely, knowingly and intelligently waived his constitutional rights prior to pleading no contest. A plea is valid if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances. (*People v. Howard* (1992) 1 Cal.4th 1132, 1175.)

Furthermore, defendant's waiver of his right to appeal, where, as here, he agreed to the sentence imposed, forecloses our consideration of the potential issues identified by defendant. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76-86) A challenge to a stipulated sentence cannot be pursued on appeal without a certificate of probable cause, because the sentence term is an integral part of the plea agreement and such a challenge is actually an attack on the plea itself. (*Id.* at p. 79.) This is also true for the challenge to the validity of the plea based on a claim of ineffective assistance of counsel. (*People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

We have reviewed the sentencing for accuracy and have determined that the court imposed the agreed upon term. Defendant's purported claim that the court abused its discretion in failing to strike his prior strike conviction is unmeritorious. Defendant admitted the truth of the prior strike conviction. The admission of the strike prior, and the doubling effect it would have on the stipulated sentence were integral parts of the plea agreement. By accepting the plea bargain and admitting the prior conviction, defendant

waived any legal challenges to its validity or whether the trial court abused its discretion in failing to strike it. The admission means there is no record of it for us to review.

(*People v. LaJocies* (1981) 119 Cal.App.3d 947, 956-957.)

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:

HOLLENHORST

J.

SLOUGH

J.