

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT PERCHEZ,

Defendant and Appellant.

E065514

(Super.Ct.No. FWV1600030)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael R. Libutti, Judge. Affirmed with directions.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Vincent Perchez was charged by felony complaint with possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1), count 1), possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a), count

2), possession for sale of a controlled substance (Health & Saf. Code, § 11378, count 3), and possession of marijuana for sale (Health & Saf. Code, § 11359, count 4). It was further alleged that counts 1-4 were committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(A)), and that defendant had suffered one prison prior (Pen. Code, § 667.5, subd. (b)). Defendant entered a plea agreement and pled no contest to count 3 and admitted the gang enhancement. As part of the plea agreement, the parties agreed to strike the punishment for the gang enhancement and dismiss the remaining counts and allegations. The parties stipulated that the police reports provided a factual basis for the plea. The court sentenced defendant, in accordance with the plea agreement, to two years in state prison and struck the punishment for the gang enhancement.

Defendant filed a timely notice of appeal with a request for certificate of probable cause, which was denied. He then filed an amended notice of appeal, based on the sentence or other matters occurring after the plea. We direct the court to dismiss counts 1, 2, and 4, as well as the prison prior allegation. Otherwise, we affirm.

PROCEDURAL BACKGROUND

Defendant was charged with, and pled no contest to, the allegation that on or about December 31, 2015, he was in possession for sale of a controlled substance. (Health & Saf. Code, § 11378.) He also admitted the allegation that he committed the crime for the benefit of a criminal street gang. (Pen. Code, § 186.22, subd. (b)(1)(A).)

DISCUSSION

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 and two potential arguable issues: (1) whether defendant was properly advised of his constitutional rights and consequences of pleading guilty, and whether he voluntarily waived them; and (2) whether the factual basis for the plea was sufficient, and whether this issue is cognizable without a certificate of probable cause. Counsel has also requested this court to undertake a review of the entire record.

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 conducted an independent review of the record and find no arguable issues.

We note an apparent clerical error, which defendant has pointed out. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made by a clerk, by counsel, or by the court itself. (*Ibid.* [judge misspoke].) A court “has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

In this case, the court neglected to dismiss counts 1, 2 and 4, as well as the prison prior. The plea agreement stated that defendant would plead no contest to one count of

possession for sale of a controlled substance (count 3), in exchange for two years in state prison and the dismissal of the remaining counts and allegations. Defendant pled no contest to count 3. The court did not dismiss the remaining counts or allegation. Nonetheless, the minute order states that the court ordered counts 1, 2, and 4 dismissed, as well as the prison prior allegation, on motion of the People. Neither party mentioned the court's failure to dismiss the remaining counts and allegation below. Thus, the record indicates that the parties intended those counts and allegation to be dismissed. It is evident the court's failure to order the dismissal was inadvertent. Accordingly, in the interest of clarity, we will direct the trial court to dismiss counts 1, 2 and 4 and the prison prior allegation.

DISPOSITION

The trial court is directed to order the dismissal of counts 1, 2 and 4, as well as the prison prior allegation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.