

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DON HENRY WADE,

Defendant and Appellant.

F062918

(Super. Ct. No. BF135950A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Cornell, Acting P.J., Gomes, J. and Franson, J.

## INTRODUCTION

Appellant Don Henry Wade was sentenced to an agreed-upon three-year term of imprisonment for violating Penal Code section 290.012, subdivision (a),<sup>1</sup> failure of a required registrant to update his registration annually. In exchange for his plea, the People agreed to dismiss other charges and the trial court struck his prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). Wade subsequently filed a notice of appeal, but the Kern County Superior Court denied his request for issuance of a certificate of probable cause. Appellate counsel for Wade filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After review of the record, we affirm the judgment.

## FACTUAL AND PROCEDURAL SUMMARY

In 1993 Wade was convicted of an offense that required him to register pursuant to section 290. On February 16, 2011, while investigating an unrelated matter, a deputy with the Kern County Sheriff's Department contacted Wade and determined that Wade had failed to update his sex offender registration on an annual basis. Wade had last registered in October 2009.

On March 14, 2011, a complaint was filed against Wade alleging violations of (1) section 290.012, subdivision (a), failure of required registrant to update registration annually, and (2) section 290.018, subdivision (b), failure of required registrant to update registration upon change of address. The complaint also alleged Wade had suffered a prior felony conviction that constituted a strike for purposes of sections 667, subdivisions (c) through (j) and 1170.12, subdivisions (a) through (e).

The public defender was appointed to represent Wade. On March 18, 2011, Wade entered a plea of not guilty to both counts and denied the allegation. Wade was ordered to appear on April 1, 2011, at 9:00 a.m., and released on bail. Wade failed to appear as

---

<sup>1</sup>All further statutory references are to the Penal Code unless otherwise stated.

ordered on April 1, bail was forfeited, and a bench warrant issued for his arrest. On May 13, 2011, Wade appeared in court after issuance of the bench warrant. The public defender was reappointed as his counsel, the bail forfeiture was set aside, the bail bond was reinstated, and bail was increased. Wade was remanded into custody.

On May 26, 2011, Wade appeared in court with counsel. Wade had initialed and signed an advisement of rights, waiver, and plea form for felonies. The plea form indicated Wade would plead guilty or no contest to count 1, the section 290.012, subdivision (a) offense. In exchange for his plea, the prosecution would dismiss count 2 in case No. BF135950A and the charge pending in case No. BF136951A relating to Wade's failure to appear. In addition, the plea agreement indicated Wade was entering into the agreement on the understanding the trial court would dismiss the strike allegation and sentence him to a term of three years.

At the start of the May 26 hearing, the trial court noted that it had the signed plea agreement. The trial court summarized the terms of the agreement as Wade pleading guilty or no contest to count 1, admitting the prior strike conviction on condition the trial court granted a *Romero* motion, and being sentenced to the upper term of three years, which Wade would "serve that at 50 percent." The trial court also noted that other charges would be dismissed in exchange for the plea. When asked if that was what Wade understood and agreed to, Wade replied, "Yes."

The trial court then proceeded to query Wade on whether he had reviewed, initialed, and signed the plea form, discussed his rights with his attorney, and understood his rights. Wade responded affirmatively to each question. The trial court then asked if Wade had any questions, to which Wade responded, "No, I don't." The trial court asked Wade if he was giving up his rights and Wade responded affirmatively.

The parties then stipulated to a factual basis for the plea and the trial court again asked Wade if he had any questions before his plea was taken. Wade again responded, "No, I don't." The trial court then accepted Wade's plea of guilty to count 1 and his

admission that he had suffered a prior strike conviction and found there was a knowing, intelligent, and voluntary waiver of rights. The People formally moved that the other charges be dismissed and the motion was granted.

Wade's counsel asked for an immediate sentencing hearing; the trial court indicated it did not have time, but could "short set" the matter for sentencing the next week. Defense counsel asked for sentencing within "the statutory time," and the trial court set sentencing for June 24, 2011.

On June 24 Wade appeared with counsel and waived time for sentencing. The sentencing was continued because Wade indicated he wanted to retain private counsel to investigate filing a motion to withdraw the plea.

At the continued sentencing on July 1, the public defender informed the trial court that Wade had indicated he had hired a private attorney, who was appearing in another department. The trial court stated it would not keep continuing the matter for a "phantom attorney" but would trail the matter and check with the other department to see if Wade's purported counsel was in fact representing him and going to appear.

Other matters were taken up by the trial court, after which Wade's case resumed. Wade was present with the public defender. The trial court asked if there was any legal reason why sentence could not be imposed, to which Wade's counsel replied, "No, your Honor." When the trial court asked if Wade waived formal arraignment, the public defender asked for a moment to consult with Wade, which was granted. After consulting with Wade, the public defender asked if the matter could be trailed. The trial court refused and again asked if formal arraignment was waived. The response was affirmative.

The public defender moved to strike Wade's prior conviction in the interests of justice, which the trial court granted in accordance with the plea agreement. The trial court asked the parties if they were submitting on the indicated sentence; the responses were affirmative. In accordance with the plea agreement, the trial court imposed a

sentence of three years. After asking if there was any objection to the recommended fines and fees, and the public defender indicating no objection, the trial court imposed fines and fees as recommended in the probation report.

The abstract of judgment was filed July 5, 2011. On July 19 Wade filed a notice of appeal and requested a certificate of probable cause. In support of his request for a certificate of probable cause, Wade asserted the trial court had (1) abused its discretion, (2) acted on the basis of bias or prejudice, and (3) violated his Fourteenth Amendment right. The superior court denied the request for a certificate of probable cause.

On August 2, 2011, this court issued an order granting Wade 15 days in which to file a letter brief establishing a jurisdictional basis why this appeal should not be dismissed. In response, a notice of appeal stating the appeal was “based on the sentence or other matters occurring after the plea that do not affect the validity of the plea,” was filed on August 8, 2011. Also in response, on August 16 Wade filed a letter with this court alleging (1) the public defender present at sentencing was not familiar with his case, (2) there was no signed plea agreement, (3) his Fourteenth Amendment due process right was violated, (4) his Sixth Amendment right to adequate representation by counsel was violated, and (5) he alleged an attorney-client conflict at sentencing because he was offered a “1 year lid” sentence for failure to register as a drug offender.

By order dated August 16, 2011, this court deemed the August 8, 2011, notice of appeal to be a valid amended notice of appeal and allowed the appeal to proceed.

On October 20, 2011, Wade’s appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436. Also on October 20, this court sent a letter to Wade inviting him to submit a letter raising any issue he wished this court to consider in the appeal. After receiving a notice of change of address, this court resent the letter to Wade’s new address. There has been no response from Wade.

## **APPELLATE COURT REVIEW**

Wade's appointed appellate counsel filed an opening brief that summarized the pertinent facts, raised no issues, and requested this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also included the declaration of appellate counsel indicating that Wade had been advised he could file his own brief with this court. To date he has not done so.

Assuming Wade would raise those issues set forth in his letter filed with this court on August 16, 2011, we briefly address, and reject, his contentions. First, Wade's claim that he never signed a plea agreement is patently false. The clerk's transcript contains a plea agreement signed by Wade. The reporter's transcript reflects that Wade acknowledged in open court having initialed and signed the form.

With respect to Wade's claim that his due process rights were violated, again, both the clerk's and reporter's transcript demonstrate that Wade was afforded due process. The plea agreement advised him of his rights and the consequences of his plea; he initialed that he was waiving those rights and understood the consequences. At the hearing on entry of his plea, Wade affirmed that he understood his rights and was waiving those rights.

As for Wade's claims the public defender at sentencing was unfamiliar with his case and he received inadequate representation, the record discloses otherwise. The public defender was aware of and familiar with the terms of the plea agreement and the probation report and able to respond to the trial court's inquiries at sentencing. In addition, the public defender present at sentencing conferred with Wade before proceeding with the sentencing. Wade did not object.

Wade's last contention, that there was a "conflict" because he had been offered a "1 year lid" for failure to register as a drug offender lacks support in the record. There is no evidence in the clerk's transcript or the reporter's transcript of any such offer.

Moreover, Wade was not a drug offender charged with any drug-related offenses; he was a sex offender and was charged with willfully failing to register as such.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

#### **DISPOSITION**

The judgment is affirmed.