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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ALLEN MAULDIN,

Defendant and Appellant.

F063304

(Super. Ct. No. PCF255045)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Tulare County. Ronn Couillard, Judge.†

Barbara Coffman, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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\* Before Levy, Acting P.J., Kane, J., and Poochigian, J.

† Retired Judge of the Tulare Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## STATEMENT OF THE CASE

On July 19, 2011, appellant, Charles Allen Mauldin, was charged in a criminal complaint with felony driving or taking of a vehicle (Veh. Code, § 10851, subd. (a), count one), receiving a stolen motor vehicle, a felony (Pen. Code, § 496d, subd. (a), count two),<sup>1</sup> and misdemeanor possession of burglar's tools (§ 466, count three). Appellant was also charged with five prior prison term enhancements (§ 667.5, subd. (b)).

On July 21, 2011, appellant entered into a plea agreement. Under the terms of the plea agreement, appellant would admit count two, one prior prison term enhancement, and would receive a prison term of four years to be served concurrently with his prison term for a parole violation. The court advised appellant of, and appellant waived, his rights pursuant to *Boykin/Tahl*<sup>2</sup> and to a preliminary hearing.

Appellant pled no contest to count two and admitted a prior prison term enhancement. The trial court dismissed the remaining allegations. The court sentenced appellant in accordance with the terms of the plea agreement and imposed a \$200 restitution fee. On September 20, 2011, appellant executed a written motion for the trial court to recall his sentence. Appellant's trial counsel filed a timely notice of appeal.<sup>3</sup>

## APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he

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

<sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

<sup>3</sup> Appellant filed numerous notices of appeal seeking a certificate of probable cause. The trial court denied appellant's requests for a certificate of probable cause.

could file his own brief with this court. By letter on December 19, 2011, we invited appellant to submit additional briefing.

Appellant replied with a document challenging his legal representation. Appellant asserts that there was no strategy, tactics, or defense in his case. Appellant states that he was called back to the courtroom without his counsel of record because counsel was preoccupied and not on the same page as appellant. Appellant also argues that he later learned of prison realignment after he entered his change of plea and sought to have the trial court recall his sentence. In a separate letter, appellant asserts that he did not commit the offense, but legally purchased the vehicle he was charged with taking.

We view appellant's brief as a challenge to the adequacy of his trial counsel. The defendant has the burden of proving ineffective assistance of trial counsel. To prevail on a claim of ineffective assistance of trial counsel, the defendant must establish not only deficient performance, which is performance below an objective standard of reasonableness, but also prejudice. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Tactical errors are generally not deemed reversible. Counsel's decisionmaking is evaluated in the context of the available facts. To the extent the record fails to disclose why counsel acted or failed to act in the manner challenged, appellate courts will affirm the judgment unless counsel was asked for an explanation and failed to provide one, or, unless there simply could be no satisfactory explanation. Prejudice must be affirmatively proved. The record must affirmatively demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (*People v. Maury* (2003) 30 Cal.4th 342, 389.) Attorneys are not expected to engage in tactics or to file motions which are futile. (*Id.* at p. 390; also see *People v. Mendoza* (2000) 24 Cal.4th 130, 166.) Other than his unsubstantiated assertion that counsel was

ineffective, appellant has failed to affirmatively demonstrate any deficiency in his trial counsel's representation.

Appellant has further failed to show any error in the trial court's imposition of sentence. We note that appellant entered into a plea agreement and received the benefit of the agreement. His sentence was no longer than the sentence indicated by the trial court.<sup>4</sup> Defendants cannot set aside their pleas merely because they change their minds or have buyer's remorse. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1143-1144; *People v. Knight* (1987) 194 Cal.App.3d 337, 344.)

Finally, appellant asserts that he did not commit the offense. A guilty plea is, for most purposes, the legal equivalent of a jury's guilty verdict. (*People v. Valladoli* (1996) 13 Cal.4th 590, 601.) A guilty plea serves as a stipulation that the People need not introduce proof to support the accusation. The plea ipso facto supplies both evidence and verdict and is deemed to constitute an admission of every element of the charged offense. (*People v. Alfaro* (1986) 42 Cal.3d 627, 636 [overruled on another ground in *People v. Guerrero* (1988) 44 Cal.3d 343]; *People v. Chadd* (1981) 28 Cal.3d 739, 748.) A plea of nolo contendere (or no contest) is legally equivalent to a guilty plea and also constitutes an admission of every element of the offense pled. (*People v. Warburton* (1970) 7 Cal.App.3d 815, 820-821.) We therefore reject appellant's contention that he was not guilty of receiving a stolen vehicle.

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

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<sup>4</sup> The prison realignment statute was made prospectively applicable to prisoners starting on October 1, 2011 (§ 1170, subd. (h)(6)). Appellant was sentenced on July 21, 2011, and the realignment statutes do not appear to be applicable to his case.

## **DISPOSITION**

The judgment is affirmed.