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

THE PEOPLE,

Plaintiff and Respondent,

v.

LELAND GUY EAGLE,

Defendant and Appellant.

F063376

(Kings Sup. Ct. No. 11CM1319)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Donna Tarter, Judge.

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

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Darren Indermill and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Cornell, Acting P.J., Poochigian, J. and Franson, J.

INTRODUCTION

Appellant/defendant Leland Guy Eagle pleaded no contest to two felonies and one misdemeanor after being stopped by a police officer while under the influence of alcohol and in possession of methamphetamine. He was sentenced to five years eight months in prison.

On appeal, his appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We will affirm.

FACTS¹

Around 1:00 a.m. on April 30, 2011, Lemoore Police Officer Kendall conducted a traffic stop of defendant's vehicle because it was traveling faster than the posted speed limit and making unsafe turns and lane changes. Defendant was the driver and sole occupant. Officer Kendall asked defendant for his driver's license, and he said he did not have it. Defendant falsely identified himself as "Leal Thomas."

Officer Kendall testified that defendant's eyes were red and watery, his speech was slow and slurred, and there was a strong smell of alcohol coming from the vehicle. Kendall asked defendant if he had been drinking, and defendant said no. Kendall replied that defendant was not being truthful. Defendant laughed and said he had a few beers.

Kendall directed defendant to get out of the car. He had trouble doing so. Kendall administered field sobriety tests and defendant performed poorly. Kendall also administered a preliminary alcohol screening test, which indicated defendant's blood-alcohol level was 0.217 percent.

¹ Given defendant's no contest pleas, the facts are taken from the preliminary hearing transcript and the probation report.

Defendant was arrested for driving under the influence. He was taken to the jail and searched. There was a cigarette package in defendant's pocket. It contained two baggies with a total of 0.3 grams of methamphetamine. Defendant said he had been drinking since 10:00 a.m. and had consumed two 30-packs of beer. Defendant said he had not used methamphetamine for three weeks and had forgotten about the drugs in the cigarette package.

The charges

On May 27, 2011, an information was filed in the Superior Court of Kings County charging defendant with count I, driving under the influence with a previous conviction (Veh. Code, §§ 23152, subd. (a), 23550 & 23550.5); count II, driving with a blood-alcohol level of 0.08 percent or more (Veh. Code, §§ 23152, subd. (b), 23550 & 23550.5); count III, transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); count IV, possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)); count V, misdemeanor driving on a suspended license (Veh. Code, § 14601.2); and count VI, misdemeanor falsely identifying himself to a police officer (Pen. Code,² § 148.9, subd. (a)). It was further alleged that defendant served three prior prison terms (§ 667.5, subd. (b)). Defendant pleaded not guilty and denied the special allegations.

Defendant's no contest pleas

On June 21, 2011, defendant pleaded no contest to count II, driving with a blood-alcohol level of 0.08 percent or more; count IV, possession of methamphetamine; and count V, misdemeanor driving on a suspended license; and admitted the prior prison terms. The court advised defendant of his constitutional rights, and defendant said he understood and waived his rights. The parties stipulated to a factual basis for the pleas. The court advised defendant that the maximum possible term was six years eight months

² All further statutory citations are to the Penal Code unless otherwise indicated.

in prison and also advised him of the maximum possible fines. The court dismissed the remaining charges.

Defendant signed a “DUI Advisement of Rights, Waiver, and Plea Form,” indicating the terms of his no contest pleas, that the other charges would be dismissed, and that he understood and waived his constitutional rights.

Sentencing

On August 11, 2011, the court denied probation and found defendant had a long criminal history and eleven separate violations of parole. The court sentenced defendant to five years eight months in state prison, based on the midterm of two years for count II; a consecutive term of eight months (one-third the midterm) for count IV; a concurrent term of six months for count V; and three years for the prior prison term enhancements.

The court also imposed a \$1,000 restitution fine pursuant to section 1202.4, subdivision (b), and stayed the \$1,000 restitution fine under section 1202.45. The court imposed a \$120 court security fee (§ 1465.8, subd. (a)(1) [\$40 for each count]); a \$90 court facility funding assessment (Gov. Code, § 70373, subd. (a)(1) [\$30 for each count]); a \$50 laboratory fee; and various fees and penalty assessments. The court suspended defendant’s driver’s license for four years, designated him as a habitual traffic offender, and ordered him to install a certified ignition interlock device on any vehicle he owns or operates. Defendant did not receive any credit for time in custody since he had been subject to a parole hold for absconding from parole.

On September 22, 2011, defendant filed a timely notice of appeal.

DISCUSSION

As noted *ante*, defendant’s appellate counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on February 8, 2012, we invited defendant to submit additional briefing. To date, he has not done so.

Defendant has not requested or obtained a certificate of probable cause and therefore cannot challenge the underlying validity of his plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 77-79.)

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.