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

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ALLEN CELES,

Defendant and Appellant.

F063377

(Super. Ct. No. 1434876)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Marie Sovey Silveira, Judge.

Joshua G. Wilson, 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., Cornell, J., and Gomes, J.

On August 4, 2011,¹ pursuant to a plea agreement, appellant, Jason Allen Celes, pled no contest to possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), and the court dismissed one “strike” allegation² and two prior prison term enhancement (Pen. Code, § 667.5, subd. (b)) allegations. Shortly thereafter, in that same proceeding, appellant waived his right to a presentence report, and the court imposed the agreed-upon prison term of two years.

Prior to appellant entering his plea, the prosecutor, in response to the court’s request for a statement of the factual basis for the plea, stated the following: On July 25, appellant was “found to possess, on his person, a pink baggy of suspected methamphetamine.” Subsequently, testing at a California Department of Justice laboratory revealed that “the substance was found to contain .37 grams net of methamphetamine, a usable quantity.”

At a hearing on September 19, the court noted that appellant was incarcerated in state prison and that he had indicated that he wanted to withdraw his plea. The court ordered the deputy district attorney to prepare a production order so that appellant could be brought to court, and set a hearing for September 30.

On September 26, appellant filed a notice of appeal and requested that the court issue a certificate of probable cause (Pen. Code, § 1237.5). The court granted the request. In his request for a certificate of probable cause, appellant asserted that he had been denied his right to the effective assistance of counsel.

¹ Except as otherwise indicated, all references to dates of events are to dates in 2011.

² We use the term “strike” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (Pen. Code, §§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

On September 30, appellant appeared in court with counsel, at which time the court stated that in order for it to consider a motion to withdraw appellant's plea, the court would need to conduct a *Marsden* hearing.³ The court offered appellant the option of proceeding immediately with the *Marsden* hearing or holding it the following week. Appellant chose to proceed immediately, at which point, the court, with only appellant, counsel and court personnel present, conducted a *Marsden* hearing. After hearing from appellant and defense counsel, the court denied appellant's *Marsden* motion and his motion to withdraw his plea. The court reiterated its rulings in open court moments later.

On April 25, 2012, appellant's appointed appellate counsel filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant has not responded to this court's invitation to submit additional briefing.

On May 14, 2012, this court ordered that appellant's notice of appeal be treated as having been filed immediately after the September 30 rulings, thereby making those rulings reviewable on appeal.

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is affirmed.

³ In *People v. Marsden* (1970) 2 Cal.3d 118, the California Supreme Court held that when a criminal defendant requests a new appointed attorney, a trial court must conduct a proceeding in which it gives the defendant an opportunity to explain the basis for the contention that counsel is not providing adequate representation. (*Id.* at pp. 123-125.) A motion for the appointment of substitute counsel on the ground that the current appointed counsel is providing inadequate representation, and the hearing on that motion, are commonly called, respectively, a *Marsden* motion and a *Marsden* hearing.