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

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK EDWARD HYDE,

Defendant and Appellant.

F063695

(Kern Sup. Ct. No. BF132925A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

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

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

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

INTRODUCTION

Appellant/defendant Mark Edward Hyde pleaded no contest to two counts of forgery (Pen. Code,¹ § 470, subd. (d)) and admitted two prior prison term enhancements (§ 667.5, subd. (b)). He was sentenced to the stipulated term of four 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.

FACTS²

In April, May, and June 2010, Bakersfield Police Detective West investigated the passing of forged checks. Clerks at Winco Food Store reported that a person purchased over \$500 worth of merchandise using counterfeit or forged checks. The clerks separately reviewed photographic lineups and identified defendant as the person who passed the checks on different occasions. The account holder of the forged checks had reported his checkbook was stolen while staying at a local hotel.

A person forged a stolen check drawn from another bank account to purchase \$725 worth of merchandise from Timeless Furnishings. The store employee reviewed a photographic lineup and identified defendant as the person who wrote the check. The account holder reported his checkbook had been stolen from his vehicle.

Detective West interviewed defendant while he was in custody for violation of parole on an unrelated case. West showed the copies of the forged checks to defendant. Defendant admitted he wrote and signed the checks to make the purchases. Defendant said he knew the checks were stolen, but someone else gave him the checks and asked him to make the purchases. Defendant gave that person the merchandise, and that person

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

² Given defendant's no contest pleas, the facts are taken from the preliminary hearing transcript and the probation report.

paid him half the amount of each check. Defendant was on parole when he committed the offenses.

The information and initial plea offer

On September 29, 2010, an information was filed in the Superior Court of Kern County charging defendant with counts I, II, and III, forgery (§ 470, subd. (d)); and counts IV and V, receiving stolen property (§ 496, subd. (a)), with five prior prison term enhancements (§ 667.5, subd. (b)).

Defendant pleaded not guilty and denied the enhancements. He was released on bail. He was represented by retained counsel, Robert Dowd.

On February 18, 2011, defendant appeared with Mr. Dowd for a readiness hearing. Defendant faced a maximum exposure of seven years six months. Defendant refused the prosecution's a plea offer of four years eight months, and the court confirmed the matter for a jury trial.

Defendant's failures to appear

On March 21, 2011, defendant failed to appear for the scheduled start of his jury trial, and the court issued a bench warrant. Defendant appeared the following day and the court quashed the warrant. On March 23, 2011, however, defendant again failed to appear, and the court issued another bench warrant. On March 24, 2011, defendant again failed to appear for trial, and the court ordered forfeiture of bail. Mr. Dowd appeared on defendant's behalf at these hearings.

On April 21, 2011, defendant appeared in court without an attorney. The court appointed a deputy public defender to represent him and rescheduled his jury trial. The court set aside the bail forfeiture and ordered reinstatement and exoneration of bail.

Defendant's no contest pleas

On June 3, 2011, defendant appeared with his deputy public defender, who stated that defendant would plead no contest to counts I and III, forgery and admit two

enhancements. The remaining charges and another pending case would be dismissed, and he would be sentenced to a stipulated term of four years eight months.

Defendant signed an “Advisement of Rights, Waiver, and Plea Form for Felonies,” indicating the terms of his no contest pleas, that the other charges and unrelated case would be dismissed, the agreed term would be four years eight month, and that he understood and waived his constitutional rights.

The court advised defendant of his constitutional rights. Defendant said he understood and waived his rights, and he pleaded no contest to counts I and III (forgery) and admitted two prior prison term enhancements. Defense counsel stipulated to a factual basis for the plea. The court dismissed the remaining charges, enhancements, and the unrelated pending case on condition the plea remain in full force and effect.

Sentencing

On July 15, 2011, defendant appeared for the sentencing hearing with his deputy public defender, who informed the court that defendant wanted to withdraw his plea. Defense counsel stated that defendant wanted to hire Mr. Revolo, a private attorney, to file and litigate that motion, but defendant needed 30 days to hire the attorney.

Defendant advised the court that he had already retained Mr. Revolo, and they had met the previous day to talk about the case. The court asked defendant if Mr. Revolo knew he was supposed to be in court. Defendant replied: “He told me to tell my attorney that he had something at juvenile court going on today but to tell him he has been retained.” The court said: “Well, no offense to you, but I hear that all the time. So absent Mr. Revolo, I’m not going to have him as the attorney of record. I’ll wait until about 11:30, and that’s it.” The court called a recess.

When the proceedings resumed, the court stated that defendant was present with his deputy public defender. Mr. Revolo was also in the courtroom. The court asked Mr. Revolo if he had been retained by defendant. Mr. Revolo said no. The court thanked and excused Mr. Revolo.

The court asked defendant why he wanted to withdraw his plea. Defendant said he wanted to hire his own lawyer and “get my sentence down, because that’s not what I was promised—for a year almost.”

Defense counsel explained that defendant was originally represented by Mr. Dowd, a private attorney, who made representations to defendant that he was unable to follow through with. Defense counsel stated that defendant’s plea was “substantially more” than what Mr. Dowd had said, and defendant felt “he should be able to get the offer that was allegedly conveyed to him by Mr. Dowd.”³ Defendant interrupted and said he at least wanted a chance at a better sentence. The court said he had a chance, and he failed to state legal grounds to withdraw his plea.

The court denied probation and sentenced defendant to the stipulated term of four years eight months, based on the midterm of two years for count I; two consecutive one-year terms for the two prior prison term enhancements; and a consecutive term of eight months (one-third the midterm) for count III. The court ordered restitution of \$229.11 to Kern Schools Federal Credit Union and \$725 to Citi Bank, the financial institutions upon which the forged checks were drawn. (§ 1202.4, subd. (f).) The court also ordered a \$200 restitution fine pursuant to section 1202.4, subdivision (b) and stayed the \$200 restitution fine under section 1202.45. The court imposed a \$10 crime prevention fee (§ 1202.5). As to each count, the court imposed a \$40 court security fee (§ 1465.8, subd. (a)(1)), and a \$30 criminal conviction assessment (Gov. Code, § 70373, subd. (a)(1)). Defendant received 288 actual credits, with 288 local credits, for a total of 576 credits.

On September 6, 2011, defendant filed a timely notice of appeal.

³ In the probation report, defendant stated that he didn’t understand why he received the term of four years eight months, because “ ‘I had an attorney who told me I was going to do two years and eight months.’ ” There is no evidence that defendant was offered a plea agreement for two years eight months. The only plea offer on the record was for four years eight months, which is what defendant eventually accepted.

On October 18, 2011, defendant's request for a certificate of probable cause was denied.

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 1, 2012, we invited defendant to submit additional briefing. To date, he has not done so.

Defendant has failed to obtain 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.