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

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN ALLAN LILLY,

Defendant and Appellant.

F064124

(Super. Ct. No. DF010445A)

**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.

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\* Before Levy, Acting P.J., Detjen, J., and Peña, J.

## STATEMENT OF THE CASE

On July 1, 2011, appellant, Stephen Allan Lilly, was charged in a criminal complaint with battery of a nonprisoner by a prison inmate (Pen. Code, § 4501.5, count 1)<sup>1</sup> and felony interference with an executive officer (§ 69, count 2). The complaint alleged three prior serious felony convictions within the meaning of the three strikes law (§§ 667, subds. (c)-(j) & 1170.12, subds. (a)-(e)) and two prior prison term enhancements (§ 667.5, subd. (b)).

On November 14, 2011, appellant entered into a plea agreement in which he would admit count 2 and all three prior serious felony allegations. In exchange for appellant's plea, he would receive a stipulated sentence of 32 months in prison and the remaining allegations would be dismissed and two prior serious felony allegations would be stricken.<sup>2</sup> The court determined that appellant had initialed and executed a felony advisement of rights and change of plea form, that he had discussed his rights with his counsel, and that he understood his rights. Appellant waived his *Miranda*<sup>3</sup> rights. The parties stipulated to a factual basis for the plea.<sup>4</sup>

Appellant admitted count 2 and all three prior serious felony allegations. The court struck two prior serious felony allegations. On December 14, 2011, the court

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

<sup>2</sup> Appellant would receive a sentence of 16 months, doubled to 32 months pursuant to the three strikes law.

<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

<sup>4</sup> On April 20, 2011, appellant was violently kicking his cell door in state prison. When correctional officers opened the food port and instructed appellant to submit to handcuffs, he refused. Appellant lunged at the food port and grabbed a canister of OC spray from an officer, forcing it downward. The can exploded. Appellant grabbed another officer's arm as she was attempting to pull out another can of OC spray, causing the second can to drop into the cell and discharge. After being subdued and handcuffed by several officers, appellant spit in the direction of escorting officers.

sentenced appellant pursuant to the plea agreement to prison for 32 months to be served consecutively to the term he was already serving in state prison.

### **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 could file his own brief with this court. By letter on April 5, 2012, we invited appellant to submit additional briefing. Appellant submitted a short letter questioning why he received a sentence of 32 months rather than the statutory low term of 16 months.

Appellant admitted three prior serious felony convictions. Following the terms of the plea agreement, the trial court struck two prior serious felony convictions. The trial court did select the statutory low term of 16 months, but the court used the remaining admission of a prior serious felony conviction to double the length of appellant's sentence pursuant to the three strikes law to 32 months. We note that appellant entered into a plea agreement in which the sentence was stipulated to be 32 months, the sentence he received from the court.

Appellant did not obtain a certificate of probable cause and cannot now challenge the stipulated term imposed by the trial court because, in effect, he is challenging the validity of the plea. Appellant cannot do so without a certificate of probable cause. (*People v. Hester* (2000) 22 Cal.4th 290, 294-297; *People v. Panizzon* (1996) 13 Cal.4th 68, 77-79.)

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

### **DISPOSITION**

The judgment is affirmed.