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

THE PEOPLE,

Plaintiff and Respondent,

v.

BOB DEAN MERRYMAN,

Defendant and Appellant.

F064223

(Fresno Super. Ct. No. F11901424)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Timothy Kams, Judge.

Allison H. Ting, 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 Wiseman, Acting P.J., Gomes, J. and Franson, J.

STATEMENT OF THE CASE

On November 17, 2011, a Fresno County jury returned verdicts finding appellant Bob Dean Merryman guilty in count 2 of transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); in count 3 of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)); and in count 4 of driving with a suspended license (Veh. Code, § 14601.1). Appellant admitted that he had sustained a prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and four prior prison terms (Health & Saf. Code, §§11370.2, subd. (c), Pen. Code, § 667.5, subd. (b)).

On December 21, 2011, the court denied appellant's request to strike the prior strike conviction (Pen. Code, § 1385), further denied probation, and imposed a state prison sentence of 21 years. The court imposed the doubled middle term of six years on count 2, a consecutive term of 15 years on the prior prison terms, a stayed sentence on count 3 (Pen. Code, § 654), and a term of 365 days in county jail on count 4. The court imposed a \$5,400 restitution fine (Pen. Code, § 1202.4, subd. (b)), imposed and suspended a second such fine pending successful completion of parole (Pen. Code, § 1202.45), and awarded 427 days of custody credits.

Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On the evening of March 11, 2011, Clovis Police Officer Mark Bradford observed a white 1993 Dodge Dakota pickup truck traveling southbound on Clovis Avenue near the Clovis Rodeo Grounds. Officer Bradford noticed the rear license plate of the truck was not illuminated as required by law. Bradford effected a traffic stop and discovered that appellant, the driver, was operating the vehicle with a suspended license, a misdemeanor offense.

Clovis Police Officer Molly Marcus arrived at the scene to assist Bradford. She asked appellant to step outside of his pickup truck and detained him on the misdemeanor. After Officer Marcus detained appellant, Bradford conducted an impound search of the cab of the vehicle, looked inside a cigarette carton, and found two Baggies. One Baggie held six individual Baggies and contained a total of 10.3 grams of methamphetamine. The second Baggie contained 6.9 grams of methamphetamine. Bradford did not find any narcotics paraphernalia, weapons, or a cell phone. Appellant did have \$45 on his person.

Bradford testified that Officer Steve Cleaver arrived at the scene and determined there was enough contraband to detain appellant for possession of methamphetamine for sale. At that point, the officers placed appellant under arrest. Cleaver explained at trial, “[T]he quantities in each one of the separate bindles, which is representative of a teener [one-sixteenth of an ounce or one and one-half grams], you have six separate packages in that manner and then you have a separate larger package which is typically used for a different purpose.”

On November 17, 2011, after the presentation of all evidence, the court read the following stipulation to the jurors: “You must treat this as a proven fact or as true. Stipulation by the Parties: The Parties stipulate to the following: On March 11, 2011, the Defendant, Bob Merryman, was in possession of a substance alleged to be methamphetamine that was seized by Officer Mark Bradford of the Clovis Police Department. Bob Merryman was aware that he possessed this substance and he believed it was methamphetamine, a controlled substance.”¹

¹ Appellant entered into the stipulation to preclude the prosecution from presenting prejudicial evidence in the case-in-chief regarding appellant’s prior felony convictions and to show knowledge on the appellant’s part.

DISCUSSION

Merryman's counsel has filed a brief which summarizes the facts, with citations to the record. The brief raises no issues and counsel asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

Merryman has responded to this court's invitation to submit additional briefing by filing multiple letter briefs. He claims that he was offered a deal of six years in prison but he turned that down after being told he would be admitted to a drug rehabilitation program. He also claims he was misinformed as to the maximum sentence he could receive. He states he would not have gone to trial and would have accepted the six year deal. In addition, he argues his medical condition precluded him from understanding the proceedings or discussions with his attorney.

We will briefly address appellant's contentions. On November 15, 2011, the court explained to appellant that it was going to look into a drug treatment program, but that the court was only exploring a possible settlement. The court then indicated that it appeared that appellant would not be eligible for a commitment to a local treatment program. At sentencing, defense counsel asked the court to show leniency and grant appellant "one chance" on a drug rehabilitation program with "enough supervision on probation." The court explained that appellant was statutorily ineligible for probation and, even if appellant were somehow eligible for probation, such a request from the defense would be denied because "[h]is record ... spans five decades and is replete with substantive crimes as well as parole violations."

A. Analysis

Appellant's contention that he was extended plea offers and drug program arrangements is not supported by the record. The record reflects that drug programs were discussed; these discussions were preliminary discussions and the court so indicated to appellant. The record does not reflect that appellant was ever extended a plea offer or offered a drug rehabilitation program, thus his decision to go to trial could not have been

influenced by offers that were not made. In addition, there is nothing in the record to support his assertion that his counsel misinformed him regarding his maximum sentence.

“There is no evidence in the record before us to support defendant’s claim. Under well-established appellate rules, this court may not consider alleged facts which are wholly outside the record on appeal.” (*People v. Thurmond* (1985) 175 Cal.App.3d 865, 874.) The record on appeal in this case does not reflect the plea agreements and sentencing alternatives asserted by appellant; it also does not reflect that his counsel misinformed him of his possible maximum sentence. Appellant’s contentions are therefore rejected.

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

DISPOSITION

The judgment is affirmed.