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

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LEE LOCKHART,

Defendant and Appellant.

F065228

(Fresno Super. Ct. Nos. F11906070
& F11903435)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don D. Penner, 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 Cornell, Acting P.J., Kane, J. and Detjen, J.

INTRODUCTION

Appellant/defendant Robert Lee Lockhart pleaded no contest in two separate cases to second degree robbery (Pen. Code,¹ § 211) and carrying a concealed weapon (§ 12025, subd. (b)(6), and admitted an on-bail enhancement (§ 12022.1). He was sentenced to the stipulated term of four years eight months.

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

Case No. F11903435

On the afternoon of April 15, 2011, Edgar Flores went to Westside Market on South Elm in Fresno County to cash a check for approximately \$1140. As the clerk counted the cash for Flores, two men entered the market. One man walked by the counter and saw the cash, and the two men left the store.

Flores took his money and got into his car, which was parked in front of the market. As he sat in his vehicle, three men attacked and assaulted him. They beat him, pulled at his clothing, put their hands in his pockets, and demanded that he give the money to them. During the beating, Flores dropped the cash, and one of the assailants picked up the money. Another assailant checked Flores's pockets again and took his cell phone. The three men ran away.

During the investigation, the officers found defendant's fingerprints on Flores's car door. The officers showed photographic lineups, which included defendant's picture,

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

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

to Flores and two store clerks. Flores and the clerks identified defendant as one of the three men who assaulted Flores and ran away with his money. Defendant was also observed on the store's surveillance videotape. Flores identified defendant at the preliminary hearing.

On June 1, 2011, defendant was arrested for this offense.

On August 23, 2011, an information was filed in the Superior Court of Fresno County charging defendant with the second degree robbery of Flores.

Case No. F11906070

On September 20, 2011, officers with the Violent Crimes Impact Team were patrolling an area known for narcotic sales, robberies, and thefts. They observed defendant and several other men loitering at a bus stop. As the officers drove past the bus stop, defendant walked away, reached into his waistband, and threw a black handgun over a fence. The officers detained defendant, and then checked the other side of the fence. They found a .380-caliber semiautomatic handgun on the ground. It was loaded with one live round in the chamber and five live rounds in the magazine. Defendant was not the registered owner of the handgun. Defendant was on bail in the robbery case.

On October 20, 2011, a complaint was filed which charged defendant with count I, carrying a concealed weapon (§ 12025, subd. (b)(6)), and count II, carrying a loaded firearm registered to another individual (§ 12031, subd. (a)(2)(F)), with an on-bail enhancement (§ 12022.1).

Plea and sentencing proceedings

On March 22, 2012, the court heard and denied defendant's motion for appointment of a new attorney, pursuant to *People v. Marsden* (1970) 2 Cal.3d 118.

On April 13, 2012, defendant pleaded no contest to second degree robbery in case No. F11903435. He also pleaded no contest to carrying a concealed weapon and admitted the on-bail enhancement in case No. F11906070, for a stipulated term of four

years eight months in both cases. The court dismissed the remaining charges, along with the allegations in an unrelated case (No. F12901347).

On June 1, 2012, the court sentenced defendant to the lower term of two years for second degree robbery, plus eight months (one-third the midterm) for carrying a concealed weapon, and two years for the on-bail enhancement, for an aggregate term of four years eight months. Defendant was awarded 123 days of presentence credit. As to each case, the court imposed a \$240 restitution fine (§ 1202.4, subd. (b)); a suspended \$240 parole revocation fine (§ 1202.45); a \$40 court security fee; and a \$30 criminal conviction assessment. The court reserved jurisdiction as to victim restitution.

On June 22, 2012, defendant filed timely notices of appeal in both cases.

DISCUSSION

As noted above, defendant's appellate counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating defendant was advised he could file his own brief with this court. By letter on September 25, 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 pleas. (*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.