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

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK HATCHER,

Defendant and Appellant.

F067986

(Super. Ct. Nos. TF006131A,
BF148743A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey and Louis P. Etcheverry, Judges.

James M. Crawford, 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., Kane, J. and Poochigian, J.

Derrick Hatcher pled no contest to felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and admitted he suffered a prior conviction that constituted a strike within the meaning of Penal Code section 667, subdivisions (b) through (i). The trial court granted Hatcher's application for a certificate of probable cause. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting he did not identify any arguable issues. Thereafter, Hatcher filed a document with this court asserting various issues. After reviewing the entire file, we reject Hatcher's arguments and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The record on appeal consists of two separate cases. The first case contained numerous causes of action and alleged numerous enhancements. Pursuant to a plea agreement, Hatcher pled no contest to one count of making a criminal threat in Kern County Superior Court case No. TF006131A (hereafter the criminal threats case). He also admitted two prior convictions that constituted strikes within the meaning of section 667, subdivisions (b) through (i). Twelve other felony counts and numerous enhancements were dismissed. Pursuant to the plea agreement, the trial court struck the two prior strike convictions, suspended imposition of sentence, and placed Hatcher on probation for a term of three years, including 220 days in jail. Hatcher was given credit for 220 days in custody. As part of the plea process, Hatcher signed a plea agreement form advising him of his trial rights, as well as the consequences of entering into a plea. The plea form also advised Hatcher he was pleading to a crime that constituted a strike within the meaning of section 667, subdivisions (b) through (i).

Three months later Hatcher was charged with felony possession of methamphetamine in Kern County Superior Court case No. BF148743A, in violation of Health and Safety Code section 11377, subdivision (a) (hereafter the possession case). The complaint alleged numerous enhancements, including three prior strike convictions

and numerous prior convictions that resulted in time served in prison. A violation of probation in the criminal threats case also was filed based on the new charges.

Approximately two weeks later Hatcher entered into a plea agreement in which he pled no contest to the possession charge and admitted three prior strike convictions in exchange for a prison sentence of four years (midterm of two years doubled because of the strike priors). He signed and initialed a plea form that confirmed the terms of the plea agreement, advised him of his trial rights, advised him of the consequences of his plea, confirmed he entered the agreement voluntarily, confirmed he understood the charges and defenses to the charges, and confirmed he had had adequate time to speak with his attorney. The trial court accepted the plea and sentenced Hatcher to the agreed-upon term of four years. Hatcher also admitted the violation of probation in the criminal threats case and was sentenced to a two-year concurrent term in prison, with probation terminating at the expiration of the two-year term.

Hatcher thereafter filed a notice of appeal with an application for a certificate of probable cause. The certificate alleged Hatcher was denied his constitutional right to due process and received ineffective assistance of counsel. The trial court granted the petition.

DISCUSSION

Hatcher filed a document titled “Motion to Withdraw Plea Bargain” addressing his concerns after appellate counsel filed his *Wende* brief. In this document, Hatcher alleges an unknown woman from the probation department, described only as a female in the Proposition 36 drug court, told him he would receive a “deal” (plea bargain) for one year in county jail and one year in a drug program. The woman instructed Hatcher to refrain from posting bail, and told him sentencing would be in three weeks. Hatcher asserts that he would have posted bail but for this instruction. According to the document, when Hatcher returned to court three weeks later, he learned the “deal” had

been retracted by another woman from the probation department, whom he described as a tall Hispanic woman.

The document outlines the plea negotiations, with defense counsel advising Hatcher that the four-year term was the best deal he could negotiate and recommending Hatcher take the offer.

The remainder of the document complains that the punishment was too severe for the crime committed. Hatcher asserts the crime should have been a misdemeanor, and the trial court doubled his sentence pursuant to the three strikes law, even though this was a nonviolent offense. He complains the amount of methamphetamine was very small, thus not justifying his lengthy sentence. He claims defense counsel was ineffective for failing to bring these facts to the trial court's attention. Hatcher asks that we change his sentence to the low term without considering the strike prior.

Hatcher misconstrues our role. We review the record, not his document, to determine whether there is any evidence of error that would require reversal of the judgment or remand to the trial court for further action. No error appears in this record. The record contains no evidence of any agreement between Hatcher and the unidentified individual from the probation department. Moreover, the probation department does not have authority to enter into plea agreements with a defendant. That authority rests with the district attorney's office. (*People v. Segura* (2008) 44 Cal.4th 921, 930 [only prosecutor is authorized to negotiate a plea agreement].) Accordingly, even if a probation officer suggested to Hatcher he would receive a specific sentence if he pled guilty, he or she was without authority to do so. We also note the prosecution filed a document pursuant to Penal Code section 1210.1, subdivision (a) indicating Hatcher was not eligible for sentencing pursuant to Proposition 36 because he had been convicted of a felony within the preceding five years.

The punishment about which Hatcher now complains is the sentence to which he agreed. He cannot now be heard to complain. The punishment was well within the

statutory requirements, and, considering his extensive criminal history, was much less than that to which Hatcher was exposed. Quite simply, there was no ineffective assistance of counsel, Hatcher's constitutional rights were not violated, and there was no error that would require reversal or modification of the judgment.

DISPOSITION

The judgment is affirmed.