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

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIS VERNON RHODES,

Defendant and Appellant.

F068175

(Super. Ct. No. 1209244)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Ricardo Cordova, Judge.

Victoria H. Stafford, 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., Poochigian, J. and Oliver, J.†

† Judge of the Superior Court of Fresno County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## INTRODUCTION

Appellant, Alvis Vernon Rhodes, entered into a plea agreement admitting, inter alia, an allegation that he committed voluntary manslaughter (Pen. Code, § 192, subd. (a)).<sup>1</sup> Appellate counsel filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After independent review of the proceedings, we find no error and affirm the trial court's judgment.

## PROCEDURAL AND FACTUAL SUMMARY

### *Facts*

On May 17, 2006, Modesto police officers were dispatched at 9:30 p.m. to a report of a Black male adult in a Jeep Cherokee (Jeep) chasing a White male adult on a bicycle that resulted in a collision.<sup>2</sup> Rhodes's Jeep was found with major front-end damage stopped in the middle of the road. Several witnesses told the officers that Rhodes acted on purpose. Rhodes was walking toward the officers talking on a cell phone. Rhodes was handcuffed and detained in a patrol vehicle. Rhodes called the victim a "mother fu\*\*\*er" and pointed to the area of the street where the victim, Ronald Little, had been moved. Rhodes spontaneously said he had to do it because Little was attacking him. Rhodes later was transported to the hospital for blood work.

Little initially was found in the middle of the street lying in a large pool of blood. Witness No. 1 called 911 and reported that she saw Rhodes, who was a neighbor, yelling and swearing angrily at a transient homeless man who frequented the area and received food from some of the neighbors. Witness No. 1 heard Rhodes threaten Little with comments that Little was "going to get it" and that Rhodes was going to kill him. Witness No. 1 yelled at Rhodes, who ran into his home and immediately then left in his

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<sup>1</sup> Unless otherwise designated, all further statutory references are to the Penal Code.

<sup>2</sup> The facts are derived from the probation officer's report and also from a suppression motion brought by Rhodes later in the proceedings.

Jeep with the tires squealing. Rhodes turned the corner heading toward Little. Moments later Witness No. 1 heard a loud crash. Witness No. 1 reported there had been prior incidents between Rhodes and homeless people.

Witness No. 2 was inside her residence when she heard a loud crash. Once outside, she saw a Jeep had crashed into her SUV, a Chevrolet Suburban, and a body lying face down in the street. Witness No. 2 detected a faint pulse and administered CPR to the victim until she was relieved by emergency responders.

Witness No. 3 was standing in his front yard when he heard two people yelling at each other. He saw a person riding a bicycle being followed by a black Jeep. In front of witness No. 3's home, the Jeep driver tried to hit the bicyclist but missed. The Jeep driver backed up on the sidewalk and drove toward the bicyclist again. The bicyclist picked up his bicycle as though he was attempting to throw it at the Jeep. The Jeep struck him and drove his body into a parked Suburban. Witness No. 3 had seen Little in the neighborhood in the past and reported that Little never caused problems. Witnesses Nos. 4, 6, and 7 gave similar accounts as witness No. 3 of how Rhodes encountered Little and then rammed Little with his Jeep.

After reading Rhodes his *Miranda*<sup>3</sup> rights, Detective Allen Brocchini questioned him. Rhodes said his neighbors loved him because when he caught someone vandalizing or burglarizing, Rhodes would confront them. Rhodes said he heard voices outside his home, walked outside, and saw Little trespassing on his property. Rhodes yelled at Little to get off of his property. Little ran down the street. According to Rhodes, Little called him a snitch and ran up to him but Rhodes was not afraid. As Little turned and walked away, Rhodes got into his Jeep because he wanted to find where the victim lived to tell the police.

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

Rhodes drove around the neighborhood looking for Little before a neighbor directed Rhodes in the right direction. When Rhodes found Little, Little called Rhodes a snitch and said “F\*%# you.” Rhodes said at this point he was outside his Jeep, so he called 911 and got back into his Jeep drive away. According to Rhodes, Little was riding his bicycle and grabbed Rhodes’s arm through the open passenger window. Although Rhodes pointed to a place on his arm where he claimed he was injured, no injury could be seen.

Rhodes retold the sequence of events, this time stating that he found Little on his property and noticed several screens pried away from the windows. After confronting Little, Little walked away and Rhodes followed him. Although Rhodes claimed he had caught burglars in the past, he admitted he had never caught Little stealing from him and also that his home had never been actually burglarized and nothing had been stolen from his property. When Rhodes located Little, Little allegedly came at Rhodes. Rhodes jumped back into his Jeep, backed up, and pulled away. Little followed Rhodes on his bicycle and started grabbing Rhodes’s right arm through the open driver’s side window.

Rhodes was holding his cell phone, but dropped it inside his vehicle. Rhodes backed up onto a lawn to get away from Little. Little reached into the Jeep and pulled on the steering wheel. Rhodes slammed into the back of a parked vehicle and both airbags deployed. Rhodes did not see what happened to Little. Rhodes said he did not intend to hit Little.

### ***Summary of Initial Proceedings***

The victim allegedly was killed by Rhodes on May 17, 2006. The original criminal complaint alleging the same allegations as set forth in the information was filed on May 22, 2006. Rhodes’s competency was challenged at the beginning of the proceedings. Rhodes was found competent to participate in the proceedings on

September 26, 2006.<sup>4</sup> Eight months into the proceedings, Rhodes successfully waived his right to counsel pursuant to *Faretta v. California* (1975) 422 U.S. 806.

Rhodes filed numerous motions in propria persona, including, inter alia, suppression motions, motions to dismiss the case for outrageous police conduct, to disqualify the prosecutor, a demurrer, discovery motions, a discovery motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, and a motion to introduce evidence of Little's character. The trial court granted Rhodes's motion to withdraw his motions without prejudice on October 1, 2007.

In November 2007, Rhodes was attempting to obtain counsel and was granted reasonable access to a telephone to do so.

On March 13, 2009, Rhodes's counsel was relieved and the case was set for a section 1368 hearing. A conflict attorney was relieved as counsel on April 8, 2009. On April 23, 2009, new counsel was appointed to represent Rhodes.

On May 19, 2008, the trial court granted a new motion by Rhodes to dismiss new motions that Rhodes had filed. Rhodes was represented by counsel at this hearing and subsequent hearings.

On May 27, 2010, the proceedings were suspended, new psychological evaluations were conducted, and the trial court again found Rhodes competent to stand trial.<sup>5</sup> Criminal proceedings were resumed. Rhodes began filing suppression and discovery motions in propria person in August 2010.

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<sup>4</sup> Dr. Jocelyn Roland evaluated Rhodes and concluded he was capable of understanding the nature and object of the proceedings against him and was capable of assisting defense counsel in his defense.

<sup>5</sup> Dr. Roland also evaluated Rhodes in April 2009 and November 2009 and found him competent to stand trial. Dr. Richard Blak evaluated Rhodes in July 2009 and concluded he was incompetent to stand trial. The trial court noted that Dr. Blak reached a different conclusion than Dr. Roland concerning Rhodes's competency but found Rhodes "obviously" understood the nature of the proceedings.

In March 2011, Rhodes again filed a motion asserting a conflict of interest with his new counsel. On March 28, 2011, Rhodes and his attorney waived a preliminary hearing and a continuous session. Rhodes withdrew his motion to relieve his counsel.

On April 18, 2011, the trial court granted Rhodes's request pursuant to *Faretta* to represent himself again. Rhodes waived time and requested a substantial continuance to prepare for trial. The court granted Rhodes's request.

### ***Information***

Rhodes was charged in an information filed May 2, 2011, with first degree homicide (§ 187, subd. (a)). The information alleged an enhancement that Rhodes personally used a deadly weapon (§ 12022, subd. (b)) and had a prior serious felony conviction within the meaning of section 667, subdivision (d).

### ***Renewed Defense Motions***

On May 12, 2011, Rhodes filed a motion to withdraw his waiver of the preliminary hearing.

By August 2011, Rhodes was represented by counsel and had a defense investigator.

On October 31, 2011, the trial court granted Rhodes's motion to represent himself and relieved his attorney.<sup>6</sup> On November 28, 2011, the trial court proceeded with three days of hearings based on motions brought by Rhodes in propria persona. These included, inter alia, a suppression motion, a claim of *Miranda* error, a motion alleging outrageous police misconduct, a gag order due to pretrial publicity, and Rhodes's motion to withdraw the waiver of his preliminary hearing. The trial court first took up Rhodes's suppression motion. Modesto Police Officer Vanessa Gomez testified that on May 17, 2006, she was dispatched to the area of Colfax and Hadden to investigate a report of a

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<sup>6</sup> At this stage of the proceedings, the prosecutor indicated that Rhodes had been represented by 14 different attorneys.

Black male driving an SUV following a White male with a dog. Gomez saw Rhodes standing near a black Jeep and stopped her vehicle.

Rhodes matched the description of a man who had hit a White male, Little, on a bicycle. Several people were pointing at Rhodes. Gomez ordered Rhodes to get off of his phone and to stop where he was. Rhodes kept talking on his phone and ignored Gomez's commands to stop, even though she was yelling at him. Rhodes said he was on hold with the California Highway Patrol. Rhodes's Jeep appeared to have front-end damage. Gomez saw a White male on the ground surrounded in blood. A witness told Gomez that Rhodes was following Little, swerved his Jeep toward Little as he rode his bicycle, and tried to hit Little with the Jeep. There was a verbal altercation between Rhodes and Little. Rhodes eventually hit Little, who was killed as a result.

Officer Florencio Costales also was dispatched to the scene of the collision between Rhodes and Little. Costales contacted Rhodes and told Rhodes he was the officer in charge of the investigation. Rhodes told Costales that he wanted to explain what started the incident. Prior to speaking further with him, Costales read Rhodes his *Miranda* rights from a department issued-card. Costales read the text of the *Miranda* warnings from the department-issued card to the trial court and stated that this was the exact text he read to Rhodes. Costales did not seize any property from Rhodes.

Officer Brocchini was working as a detective on May 17, 2006, and asked Costales to transport Rhodes to the police station. Brocchini again read Rhodes his *Miranda* rights from the department-issued card. Rhodes indicated he understood his rights. Brocchini read to the trial court the *Miranda* rights he read Rhodes from the department-issued card. Rhodes already had told Brocchini that Little had burglarized his home several times. Brocchini questioned Rhodes after turning on audio and video tape equipment. Rhodes had a cell phone that was seized and booked into evidence. Rhodes clarified that he sought to suppress his statements to police, his truck (which was impounded after Rhodes was arrested), and his cell phone.

Brocchini read from a probable cause statement that Rhodes contacted at least three witnesses and asked them which direction Little had gone. Rhodes told the witnesses that he was going to kill Little or get Little when he found him. Several witnesses saw Little riding his bicycle away from Rhodes's Jeep. One witness saw Rhodes back up at least three times to get better aim at Little on the bicycle. Witnesses reported that Rhodes intentionally ran over Little with his Jeep, crushing Little between the Jeep and a parked car.

Brocchini explained that Rhodes was detained at 8:47 p.m. on May 17, 2006, and transported about an hour later. Brocchini questioned Rhodes from 12:50 a.m. until 2:36 a.m. At 4:00 a.m., Brocchini had Costales transport Rhodes to Doctors Medical Center and then had Rhodes booked for murder. The trial court ruled that both Costales and Brocchini advised Rhodes of his *Miranda* rights, Rhodes made no incriminating statements to Costales, and the court denied Rhodes's motion to suppress statements he made to officers based on an alleged violation of *Miranda*.

The parties proceeded to Rhodes's motion to suppress the physical state of his Jeep after it was impounded and the seizure of his cell phone. The trial court noted there was a search warrant issued for investigators to look at the contents of Rhodes's cell phone. The prosecutor noted that there was nothing of interest to either party concerning the cell phone. The parties discussed a defense discovery request for Rhodes's military records. The prosecutor believed the records were in his office.

The trial court asked Rhodes about his motion to change venue. Rhodes replied that he found that issue a difficult one to pursue and he did not have a statistical report yet from an expert in Chico. Rhodes withdrew a request for the court to take judicial notice of a local newspaper article about his case.

Rhodes raised a claim that his prosecution was discriminatory and that the prosecution failed to disclose exculpatory evidence, a so-called *Murgia* motion.<sup>7</sup> One example made by Rhodes was that there were no photographs of the crash, only pictures of the aftermath of the vehicle Rhodes hit. There also was no photograph of the bicycle allegedly thrown by the victim or of any tire marks.

The trial court noted that Rhodes attached no evidence of discriminatory prosecution to his motion. The prosecutor represented that Rhodes had been provided with every single piece of information available from his own office and from law enforcement. Rhodes wanted records not just of the autopsy report but also of the surgeon who attempted to save Little's life. The prosecutor stated that he did not have any of Little's medical records. The trial court denied appellant's *Murgia* motion that his prosecution was discriminatory and that exculpatory information had been withheld from the defense because Rhodes provided insufficient evidence in his declaration to show discriminatory prosecution.

The parties stipulated to introduce into evidence Rhodes's medical records from the Veteran's Administration. Rhodes entered into a lengthy, rambling, and unfocused colloquy with the trial court, asserting that there was a conflict of interest with the prosecutor's office. The trial court denied the motion, noting that the prosecutor had been fair during the entire proceeding and that Rhodes failed to meet his burden to show a basis for a recusal of the prosecutor or the district attorney's office.

The parties turned toward the demurrer filed by Rhodes. Rhodes explained that he was demurring to the accusatory pleading because his rights were violated, he was arrested without probable cause, and he was not brought before a magistrate within 24 hours. Rhodes argued the strike prior was alleged in a town that he never lived in. The trial court denied the demurrer as not alleging any grounds challenging the sufficiency of

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<sup>7</sup> *Murgia v. Municipal Court* (1975) 15 Cal.3d 286.

the accusatory pleading itself. The court explained that Rhodes had denied the allegations in the information and the evidence of what happened would come out during trial. The court granted Rhodes's request for transcripts from prior hearings.

Rhodes next moved to dismiss the case due to outrageous police conduct and sought to combine the dismissal motion with a section 995 motion. Rhodes began to argue the details and facts of the incident. The trial court explained that the motion alleged there was coerced and perjured testimony, Rhodes's claim of innocence, the existence of exculpatory evidence, a *Miranda* violation, Little was lying in wait to kill Rhodes, and Little was intoxicated. The court explained that these were questions of fact and the ultimate issue of credibility of the witnesses did not belong with Rhodes, but with the jury. The court ruled there was no way for it to rule on these factual issues at this point in the proceedings. Rhodes continued lengthy argument on his evidentiary contentions while the court patiently explained that these were matters for the jury to decide.

Rhodes challenged one of his appointed attorneys, filing a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 on April 17, 2012. The trial court permitted Rhodes to get a new attorney from the appointments list.

### ***Change of Plea Hearing***

On June 25, 2013, Rhodes was represented by attorney Eric Schweitzer during a change of plea hearing. Under the terms of the plea agreement, Rhodes would admit the crime of voluntary manslaughter pursuant to section 192, subdivision (a) and the personal use of a deadly weapon pursuant to section 12022, subdivision (b). Rhodes also would admit a prior serious felony conviction, not alleged in the information. The prosecutor moved, without objection, to so amend the information to include the so-called strike prior. Rhodes would admit the strike prior, which also would be counted as a serious prior felony conviction pursuant to section 667, subdivision (a).

Rhodes would be sentenced to the midterm of six years, doubled to 12 years under the three strikes law, with the right to challenge the strike offense pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Rhodes would be sentenced to consecutive sentences of one year for the personal use of a deadly weapon and five years for the prior serious felony enhancement and face a sentence of 18 years with a minimum possible sentence of 12 years.

The trial court explained the consequences of the plea to Rhodes, including an agreement that Rhodes would waive his appellate rights. Rhodes agreed to waive his appellate rights and told the court that he had had enough time to consult with his attorney. Rhodes stated no one had made other promises to him to secure the change of plea and that he understood the nature of the charges against him. The court explained to Rhodes his *Boykin/Tahl*<sup>8</sup> rights, and Rhodes waived them.

The parties stipulated to a factual basis for the plea based on the following presentation by the prosecutor. On May 17, 2006, Rhodes, while in a heated argument with Little, a human being, intentionally drove his SUV into Little and caused Little's death by that means. Rhodes pled no contest to one count of voluntary manslaughter in violation of section 192, subdivision (a). Rhodes admitted personally using a deadly weapon, an SUV, to effectuate his offense. Rhodes admitted a prior serious felony conviction as a strike offense and as an enhancement within the meaning of section 667, subdivision (a) and the three strikes law.

On September 5, 2013, the trial court declined Rhodes's request to strike the prior serious felony conviction pursuant to *Romero*. The court noted that Rhodes had a long criminal history. The court sentenced Rhodes to the midterm of six years for voluntary manslaughter and doubled this term pursuant to the three strikes law. The court

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<sup>8</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

sentenced Rhodes to consecutive terms of one year for the weapon enhancement and five years for the prior serious felony enhancement. Rhodes's total prison term was 18 years.

The trial court granted actual custody credits of 2,668 days and 400 days of conduct credits. Rhodes received total custody credits of 3,068. The court imposed a restitution fine of \$3,600 and imposed various other fines, fees, and penalties. The court granted Rhodes's certificate of probable cause, but limited its scope to review of the trial court's refusal to strike the prior serious felony conviction pursuant to *Romero*.

### **APPELLATE COURT REVIEW**

Rhodes's appointed appellate counsel filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Rhodes was advised he could file his own brief with this court. By letter on December 30, 2013, we invited Rhodes to submit additional briefing.

Rhodes filed a brief, although untimely, that ultimately was filed by this court. Rhodes alleges prosecutorial and police misconduct and the concealment by the police of Little's propensity for violence. Rhodes challenges the trial court's bias and its ability to fairly rule on a request to strike the prior serious felony conviction pursuant to *Romero*. Rhodes also challenges his trial counsel's competency at the sentencing hearing.

#### ***Challenges to Conviction***

Rhodes's challenges of prosecutorial and police misconduct, as well as his assertion that Little was prone to violence, are all matters brought in lengthy motions to the trial court. The trial court found no merit to these contentions. We find no error in the trial court's rulings and also find these matters without merit. We further note that Rhodes admitted that he committed a voluntary manslaughter and personally used a deadly weapon in the commission of his offense. Rhodes also admitted having

committed a prior serious felony as a strike offense and as a prior serious felony conviction.

A guilty plea is, for most purposes, the legal equivalent of a jury's guilty verdict. (*People v. Valladoli* (1996) 13 Cal.4th 590, 601.) A guilty plea serves as a stipulation that the People need not introduce proof to support the accusation. The plea ipso facto supplies both evidence and verdict and is deemed to constitute an admission of every element of the charged offense. (*People v. Alfaro* (1986) 42 Cal.3d 627, 636, overruled on another ground in *People v. Guerrero* (1988) 44 Cal.3d 343; *People v. Chadd* (1981) 28 Cal.3d 739, 748.) A plea of nolo contendere legally is equivalent to a guilty plea and also constitutes an admission of every element of the offense pled. (*People v. Warburton* (1970) 7 Cal.App.3d 815, 820-821.) Because Rhodes has admitted the elements of the offense, and there was stipulated factual basis for his plea, he cannot challenge evidentiary matters on appeal.

We further note that Rhodes's certificate of probable cause was not generally granted by the trial court. The trial court granted the certificate to Rhodes's *Romero* challenge. Without a certificate of probable cause, Rhodes cannot challenge the merits of the plea agreement or the factual basis for his plea of no contest. (See *People v. Panizzon* (1996) 13 Cal.4th 68.)

### ***Sentencing Contentions***

Rhodes contends the trial court was biased against him and it was futile for him to request that the trial court strike his prior serious felony conviction pursuant to *Romero*. We initially observe that Rhodes raises a host of issues in his brief related to the extensive set of motions he filed in the trial court. Rhodes apparently is attempting to show that the trial court was biased against him.

We have read the lengthy law and motion proceedings and Rhodes's numerous motions. We find that although few of Rhodes's motions had any merit, the trial court carefully evaluated each motion. The trial court patiently explained its rulings and

permitted Rhodes extra latitude to explore tangential aspects to his arguments. Where Rhodes made reasonable requests, for instance when he sought copies of the transcripts of earlier proceedings, the trial court granted those motions.

Rhodes had in excess of 14 attorneys represent him over a span of some seven and a half years. Rhodes often represented himself pursuant to *Faretta*. The trial court treated Rhodes respectfully and addressed Rhodes's concerns both when Rhodes was represented by counsel and when Rhodes represented himself. There is no merit to Rhodes's assertion that the trial court was biased against him or that seeking relief under *Romero* was futile.

Rhodes challenges the effectiveness of his trial counsel. The defendant has the burden of proving ineffective assistance of trial counsel. To prevail on a claim of ineffective assistance of trial counsel, the defendant must establish not only deficient performance, which is performance below an objective standard of reasonableness, but also prejudice. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Tactical errors generally are not deemed reversible. Counsel's decisionmaking is evaluated in the context of the available facts. To the extent the record fails to disclose why counsel acted or failed to act in the manner challenged, appellate courts will affirm the judgment unless counsel was asked for an explanation and failed to provide one or unless there simply could be no satisfactory explanation. Prejudice must be proved affirmatively. The record must affirmatively demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (*People v. Maury* (2003) 30 Cal.4th 342, 389 (*Maury*).)

Attorneys are not expected to engage in tactics or to file motions that are futile. (*Maury, supra*, 30 Cal.4th at p. 390; see *People v. Mendoza* (2000) 24 Cal.4th 130, 166.) Rhodes generally asserts that he had ineffective representation for seven years and that Schweitzer failed to make a futile objection that his prior strike conviction allegedly

occurred in Stanislaus County in 1994, at a time when Rhodes asserts he did not live there. Rhodes has failed to demonstrate that his trial counsel was ineffective with affirmative proof.

It is unclear from Rhodes's brief whether or not he is challenging the actual sentence that he received either because the trial court abused its discretion under *Romero* or because the trial court otherwise made a sentencing error. Out of an abundance of caution, therefore, we address the issue of whether Rhodes was sentenced properly.

We initially note that Rhodes had a long history of criminal convictions, albeit for misdemeanor offenses that were often drug related. The trial court did not abuse its sentencing discretion in failing to strike the prior serious felony conviction. We further note that even if the trial court somehow erred in calculating Rhodes's sentence, or in the court's understanding of its sentencing discretion, Rhodes would be estopped from challenging his sentence on appeal because his sentence was the result of a plea bargain resulting in a substantially reduced sentence than the sentence for first degree murder. This is so even if the trial court erred in determining Rhodes's sentence. (*People v. Ellis* (1987) 195 Cal.App.3d 334, 343-347.) For Rhodes to now challenge his sentence amounts to trifling with the courts. (*Id.* at p. 345; see *People v. Miller* (2012) 202 Cal.App.4th 1450, 1456-1461.)

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

#### **DISPOSITION**

The judgment is affirmed.