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

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN HERNANDEZ,

Defendant and Appellant.

F068543

(Super. Ct. No. F12906046)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Don D. Penner, Judge.

Robert L.S. Angres, 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 Levy, Acting P.J., Cornell, J. and Detjen, J.

Juan Hernandez pled no contest to one count of aggravated mayhem, in violation of Penal Code section 205.<sup>1</sup> He also admitted the crime was committed for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b)(1). The trial court sentenced him to a term of life in prison with a minimum term of 15 years, to be served before he was eligible for parole. We will affirm the judgment.

### **FACTUAL AND PROCEDURAL SUMMARY**

The crime to which Hernandez pled was committed while he was on trial for murder and attempted murder along with two codefendants. The prosecution alleged several gang members shot and killed a rival gang member and wounded another. Hernandez was alleged to have planned the shooting.

The incident leading to the charges in this case occurred during a break in jury selection in the murder case. With 90 to 100 prospective jurors in the courtroom, Hernandez attacked one of his codefendants, Ramanjit Singh Hundal, with a razor blade from a disposable razor that Hernandez somehow had smuggled into the courtroom. The attack occurred at defense counsel's table, although neither the judge nor either counsel was present during the attack. Hernandez quickly was subdued by deputies, but Hundal suffered numerous slashing wounds that required medical treatment. Hundal opined he was attacked because he had dropped out of the gang.

Hernandez was charged with one count of attempted murder (§§ 664, 187) and one count of aggravated mayhem (§ 205). Each count also alleged the crime was committed for the benefit of a criminal street gang pursuant to section 186.22, subdivision (b)(1).

Hernandez pled no contest to the aggravated mayhem count and admitted the gang enhancement. The prosecution dismissed the attempted murder count. Hernandez was sentenced to life in prison with the possibility of parole after he served a minimum of 15 years.

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

## DISCUSSION

Hernandez obtained a certificate of probable cause raising two issues. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting he failed to identify any arguable issues in this case. By way of letter dated April 25, 2014, we invited Hernandez to submit additional briefing. To date he has not done so. We have reviewed the entire record and agree there are no arguable issues in this case.

The first issue raised in Hernandez's certificate of probable cause relates to his motion to withdraw his plea at the sentencing hearing. The basis for the motion was, essentially, that Hernandez changed his mind and wanted to proceed to trial. In the event the trial court did not find good cause for withdrawing the plea, Hernandez argued he received ineffective assistance of counsel because defense counsel did not inform him that the plea could be withdrawn only for good cause. The trial court denied the motion on both grounds.

Section 1018 provides that a defendant may move to withdraw his plea of guilty at any time before entry of judgment, and the trial court may grant the motion if good cause is shown. "To establish good cause to withdraw a guilty plea, the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress." [Citations.] The defendant may not withdraw a plea because the defendant has changed his or her mind." (*People v. Archer* (2014) 230 Cal.App.4th 693, 702.)

Nor can Hernandez establish ineffective assistance of counsel for the alleged failure to advise him that his guilty plea could be withdrawn only for good cause. "Establishing a claim of ineffective assistance of counsel requires the defendant to demonstrate (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation prejudiced the defendant, i.e., there is a 'reasonable probability'

that, but for counsel's failings, defendant would have obtained a more favorable result. [Citations.] A 'reasonable probability' is one that is enough to undermine confidence in the outcome. [Citations.] [¶] Our review is deferential; we make every effort to avoid the distorting effects of hindsight and to evaluate counsel's conduct from counsel's perspective at the time. [Citation.] A court must indulge a strong presumption that counsel's acts were within the wide range of reasonable professional assistance. [Citation.] ... Nevertheless, deference is not abdication; it cannot shield counsel's performance from meaningful scrutiny or automatically validate challenged acts and omissions." (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541.)

Even if we were to assume counsel was ineffective, there is no possibility Hernandez would have obtained a better outcome had counsel been effective. Hernandez attacked his codefendant with a razor blade before 90 to 100 witnesses and three deputy sheriffs. The result of the attack left the victim with disfiguring scars. The plea agreement was the best possible result Hernandez could have hoped for under these circumstances.

The final issue identified in Hernandez's application for a certificate of probable cause is the assertion that the trial court erred in calculating the good time/work time credits to which Hernandez was entitled. This issue arises, presumably, because at the sentencing hearing the probation officer initially indicated Hernandez would be entitled to 43 days good time/work time credits. The trial court rejected that suggestion, noting that a defendant sentenced to a life term was not entitled to good time/work time credits.

The trial court erred. The trial court cited *People v. Garcia* (1981) 115 Cal.App.3d 85, disapproved on other grounds in *People v. Marsh* (1984) 36 Cal.3d 134, 141, *People v. Rowland* (1982) 134 Cal.App.3d 1, and *In re Monigold* (1983) 139 Cal.App.3d 485 as support for its decision. These cases analyze the effect of imposition of a life sentence on a prisoner's ability to earn good time/work time credits pursuant to section 2933. These cases concluded that since section 2933 specifically limits its

application to only those prisoners serving a determinate term, then prisoners serving an indeterminate term are not entitled to good time/work time credits.

*Garcia, Rowland, and Monigold* preceded the addition of subdivision (a)(4) to section 4019. This subdivision provides that a prisoner “confined in a county jail ... following arrest and prior to the imposition of sentence for a felony conviction” is entitled to good time/work time credits. Section 4019 does not limit its application to only those prisoners serving a determinate sentence, as does section 2933. Since Hernandez was confined in county jail following his arrest and prior to the imposition of sentence, he is entitled to good time/work time credits pursuant to section 4019. (*People v. Brewer* (2011) 192 Cal.App.4th 457, 460-464.)

#### **DISPOSITION**

The judgment is affirmed. The matter is remanded to the trial court to award Hernandez any good time/work time credits he earned before sentencing. We express no opinion on any other possible limitation on Hernandez’s ability to earn good time/work time credits. The trial court is directed to prepare an amended abstract of judgment reflecting the award of any good time/work time credits and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation and all other appropriate agencies.