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

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY CURTIS,

Defendant and Appellant.

F070969

(Kings Super. Ct. No. 14CM7171)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Michael J. Reinhart, Judge.

J. Edward Jones, 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 Kane, Acting P.J., Poochigian, J., and Smith, J.

Appellant Tony Curtis appeals from a judgment entered after he pleaded guilty to one count of possession of drugs in state prison, a violation of Penal Code<sup>1</sup> section 4573.6. Appellant counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting this court review the entire record. Following independent review of the record, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

The complaint filed on March 26, 2014, alleged, upon information and belief, the following: possession of methamphetamine, heroin and marijuana while in a substance abuse treatment facility (count one, violation of § 4573.6), possession of a controlled substance for sale, to wit, methamphetamine, (count two, violation of Health & Saf. Code, § 11378), and possession of a controlled substance for sale, to wit, heroin (count three, violation of Health & Saf. Code, § 11378). It was further alleged pursuant to sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i), as to each count, that appellant suffered four prior convictions for serious or violent felonies.

On May 8, 2014, appellant entered a plea of not guilty to all charges.

On December 4, 2014, pursuant to a plea agreement, appellant withdrew his plea of not guilty to all charges and entered a plea of guilty to count one and admitted one prior serious felony. The balance of the charges and allegations were dismissed. Appellant waived his right to appeal. In accordance with the plea agreement, the court sentenced appellant to two years on count one, doubled to four years pursuant to appellant's admission to the prior serious or violent felony. The sentence was ordered to run consecutive to the term appellant was already serving at the time of the offense.<sup>2</sup>

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

<sup>2</sup> Appellant was serving a 15 years to life sentence and a 25 years to life sentence at the time of the subject offenses.

Appellant was ordered to pay a \$300 restitution fine, a second \$300 restitution fine that was stayed, a \$40 court operations fine and a \$30 court facilities funding fee.

On January 29, 2015, appellant filed a notice of appeal and a request for a certificate of probable cause. The request stated the following grounds:

1. The complaint was not verified and was based on information and belief.
2. Counsel was ineffective for failing to raise objections to the complaint and ignoring appellant's request to have the charges certified.
3. Proposition 47 reduced the felony statute to which he pled guilty to a misdemeanor and "[a] bond/chattel paper was executed without filing a 1099 and a lien was created on the judgment debtor where a secured party interest existed."

The trial court denied the request for a certificate of probable cause on February 4, 2015.

On January 21, 2016, appellate counsel filed a brief raising no issues and asking this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.)

By a letter dated January 21, 2016, this court invited appellant to submit a letter stating any grounds on appeal that he wants this court to consider.

On April 10, 2015, this court received a document entitled "Appellant's Opening Brief" claiming the trial court lacked jurisdiction of the subject matter on the grounds the complaint was not verified and "plaintiff lack[ed] standing."

### **DISCUSSION**

"Section 1237.5 provides in relevant part: 'No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere ... except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such

appeal with the county clerk.’ Notwithstanding the broad language of section 1237.5, it is settled that two types of issues may be raised in a guilty or nolo contendere plea appeal without issuance of a certificate: (1) search and seizure issues for which an appeal is provided under section 1538.5, subdivision (m); and (2) issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 74-75.)

Appellant did not obtain a certificate of probable cause from the trial court. Since the issues he raises do not fall under the two exceptions noted above that do not require a certificate of probable cause, the issues appellant raises are not cognizable on appeal.

Moreover, these issues are not cognizable on appeal for the additional reason that they are barred by appellant’s waiver of his right to appeal.

“ ‘[A] general waiver of the right to appeal, given as part of a negotiated plea agreement, will not be construed to bar the appeal of sentencing errors [unresolved by the particular plea agreement] occurring subsequent to the plea ....’ ” (*People v. Orozco* (2010) 180 Cal.App.4th 1279, 1284.) As part of his plea bargain, however, appellant waived his appellate rights and none of the issues he raises involve alleged sentencing errors.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSTION**

The judgment is affirmed.