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

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL RICHARD BARTELS,

Defendant and Appellant.

F071310

(Super. Ct. No. CRF45303)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Tuolumne County. Donald I. Segerstrom, Jr., Judge.

Stephanie L. Gunther, 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 Levy, Acting P.J., Gomes, J. and Detjen, J.

Daniel Richard Bartels appeals from the judgment after he entered a guilty plea to various charges. Appellate counsel could not identify any arguable issues, and the issues raised by Bartels have no merit. Accordingly, we affirm the judgment.

### **FACTUAL AND PROCEDURAL SUMMARY**

The information charged Bartels with (1) two counts of rape (Pen. Code, § 261, subd. (a)(2)), (2) two counts of forcible oral copulation (*id.*, § 288a, subd. (c)(2)), (3) penetration by a foreign object (*id.*, § 289, subd. (a)(1)), (4) attempted sodomy (*id.*, §§ 286, subd. (c)(2), 664), (5) false imprisonment by violence (*id.*, § 236), (6) misdemeanor possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), (7) furnishing a controlled substance for sale (*id.*, § 11379, subd. (a)), and (8) unlawful possession of ammunition by a convicted felon (Pen. Code, § 30305, subd. (a)(1)).

The testimony at the preliminary hearing suggests that the victim, Jane Doe, went to Bartels's house because she did not have any place else to stay. While she stayed at the house, Bartels committed numerous sexual acts on the victim telling her that if she was going to stay at his house she had to pay. Bartels also provided the victim with methamphetamine on several occasions.

Bartels eventually entered into a plea agreement wherein he pled guilty to furnishing methamphetamine (count IX) and unlawful possession of ammunition (count X). The parties agreed he would be sentenced to a prison term of three years for the ammunition count, and a consecutive one year for the furnishing methamphetamine count for a total term of four years. In exchange the remaining counts were dismissed. Bartels initialed and signed a felony advisement and waiver of rights form. The trial court confirmed that Bartels understood the form and had executed the form before accepting his plea. Bartels was thereafter sentenced to the agreed upon term. He did not request or obtain a certificate of probable cause when he filed his notice of appeal.

## DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting that after reviewing the record she could not identify any arguable issues in the case. By letter dated August 6, 2015, we invited Bartels to inform us of any issues he wished us to address.

Bartels responded to our letter by raising several concerns. First, he appears to argue there was insufficient evidence to support the furnishing methamphetamine for sale count because he only possessed a small amount of the drug. We reject any argument based on the sufficiency of the evidence because by entering a plea, Bartels admitted all of the elements of the offense. (*People v. Stanworth* (1974) 11 Cal.3d 588, 604-605, overruled on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225, 237-238; *People v. Guerrero* (1993) 19 Cal.App.4th 401, 407-408, disapproved on other grounds in *People v. Miles* (2008) 43 Cal.4th 1074, 1094, fn. 14.)

Second, he asserts he was never comfortable with the deal. It is true that Bartels expressed some reservations about entering into the plea agreement, but he ultimately chose to do so. There is nothing in the record to suggest he was forced to enter into a plea, or lacked the capacity to do so. Moreover, he never made a motion to withdraw his plea. Had he done so, based on his statements in this court, the motion likely would have been denied because pleas are not set aside simply because the defendant changes his mind. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1143-1144.)

Third, Bartels asserts he was not informed the furnishing count was actually furnishing for sale. Bartels pled to count IX of the information. This count clearly alleges that Bartels was charged with furnishing for sale methamphetamine in violation of Health and Safety Code section 11379, subdivision (a). The waiver of rights form signed by Bartels states that he was pleading to count IX, a violation of Health and Safety Code section 11379. Bartels pled guilty to a violation of Health and Safety Code section 11379, subdivision (a). Bartels's assertion of ignorance is simply not believable.

Fourth, Bartels appears to assert that both counts to which he pled should be reduced to misdemeanors pursuant to provisions of Proposition 47. This proposition reduced certain specifically enumerated drug crimes and theft crimes from felonies to misdemeanors. Neither crime of which Bartels was convicted is identified in Penal Code section 1170.18, the statute enacted by Proposition 47.

Finally, Bartels complains because the trial judge who accepted his plea was also the trial judge who signed the search warrant. He cites no authority to support the argument that simply because a trial judge issues a search warrant he is disqualified from further hearings in the case. In fact, his argument appears to conflict with Code of Civil Procedure section 170.2, subdivision (b), which provides that a judge *is not disqualified* if he or she expressed a view on a legal or factual issue presented in the proceeding in any capacity.

We have thoroughly reviewed the record and agree with appellate counsel there are no arguable issues in this case. Bartels entered into a plea agreement which resulted in dismissal of numerous serious charges and resulted in an agreed upon four-year prison term. He was sentenced in accordance with the agreement. His failure to request a certificate of probable cause limited review to issues concerning the jurisdiction of the court or the legality of the proceedings. (Pen. Code, § 1237.5; *In re Chavez* (2003) 30 Cal.4th 643, 649.) No such issues were raised.

#### **DISPOSITION**

The judgment is affirmed.