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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GERONIMO MONROY,

Defendant and Appellant.

G045966

(Super. Ct. No. 11HF2032)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Stephanie George, Judge. Affirmed.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

A felony complaint filed August 9, 2011, alleged defendant Geronimo Monroy possessed methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and drove under the influence (DUI) of alcohol (Veh. Code, § 23152, subd. (a)), with a blood-alcohol concentration (BAC) of .08 percent or higher (Veh. Code, § 23152, subd. (b)) on August 5, 2011. The complaint also alleged Monroy had suffered a prior DUI offense within the previous 10 years (Veh. Code, § 23540) and drove on the present occasion with a BAC of .15 percent or higher (Veh. Code, § 23578).

At a pretrial hearing on October 24, 2011, Monroy pleaded guilty to possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and driving with a BAC of .08 percent or higher (Veh. Code, § 23152, subd. (b)). He also admitted suffering a prior DUI conviction in 2004. In open court, Monroy stated he and his lawyer had read and discussed the felony guilty plea form, which contained a written advisement and waiver of rights. He understood that by signing the document, he was changing his plea to guilty and giving up the constitutional rights listed on the guilty plea form. He offered the following factual basis: “In Orange County, California, on Aug. 5, 2011, I did unlawfully possess a controlled substance, and I drove a motor vehicle with a [BAC] level of .15 or higher having one prior [DUI] conviction from July 13, 2004”

The guilty plea form advised Monroy he faced a four-year term, but the trial court would place him on probation on various conditions, including 60 days in jail. The court suspended imposition of sentence, and placed Monroy on probation for three years on condition he serve 60 days in jail, with credit for eight days actual time served and four days of conduct credit, ordered him to pay various fines, fees, and assessments, and ordered him to register as a narcotics offender. (Health & Saf. Code, § 11590.)

Counsel advised the trial court “we believe [Monroy] should be getting half-time credits based under equal protection of [section]1170 [,subdivision] (h) of the Penal Code.”¹

Monroy filed a notice of appeal “based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. [Citation.]” We appointed counsel to represent Monroy on appeal. Counsel filed a brief setting forth a statement of the case. Counsel did not argue against her client, but advised this court she found no issues to support an appeal. We provided Monroy 30 days to file his own written argument, but we have received no response from him. After conducting an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436, we affirm the judgment.

Monroy’s appellate lawyer identifies several potential issues for our consideration: (1) whether the plea was invalid because the trial court did not discuss on the record the trial rights Monroy waived, and the factual basis he admitted, on the guilty plea form; (2) whether the guilty plea was invalid because the trial court advised Monroy he could serve four years in jail if he violated the terms of his probation; and (3) whether the trial court’s refusal to grant his “request for one-to-one presentence conduct credit” for jail time served in August 2011 deprived him of equal protection of the laws.

Validity of Guilty Plea

Monroy did not raise a challenge to the validity of the guilty plea in his notice of appeal, nor did he obtain a certificate of probable cause. The first two potential issues cited by appellate counsel are therefore not cognizable in this appeal. (§ 1237.5; *People v. Buttram* (2003) 30 Cal.4th 773, 790 [purpose of section 1237.5 is “to weed out

¹ All further statutory references are to the Penal Code, unless otherwise stated.

frivolous and vexatious appeals from pleas of guilty or no contest, before clerical and judicial resources are wasted”].)

Presentence Custody Credits

Monroy committed the crimes in this case in August 2011. He pleaded guilty, and the court placed him on probation on October 24, 2011. At all relevant times, section 4019 provided a defendant is entitled to two days of conduct credit for every four days of actual presentence custody. (§ 4019, Stats. 2010, ch. 426, § 2, eff. Sept. 28, 2010.)

The version of section 2933 in effect at the time of Monroy’s crimes, former subdivision (e)(1), provided, “Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the *state prison* under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a . . . jail . . . from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner.” (Former § 2933, subd. (e), Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010, italics added.) The Legislature repealed this version of section 2933, including subdivision (e), a few weeks before Monroy pleaded guilty. (Stats. 2011-2012, 1st Ex. Sess., ch. 12, § 16, eff. Sept. 21, 2011, operative Oct. 1, 2011.)²

Monroy raises as a potential issue whether the court violated his right to equal protection of the law because “at the time of the offenses, presentence conduct

² Monroy also notes that after he was sentenced, the Legislature amended Health and Safety Code section 11377 to provide for punishment under section 1170, subdivision (h). Section 1170, subdivision (h)(1), provides that for felonies where a term is not specified, the “offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.” (§ 1170, subd. (h)(1); see also subd. (h)(4) [nothing in subdivision (h) prevents other authorized dispositions including orders granting probation under section 1203.1].)

credit would [have been] calculated under the former version of . . . section 2933, subdivision (e), one day of conduct credit for each day served.”

The court did not violate Monroy’s right to equal protection. The court suspended imposition of sentence and placed Monroy on probation on condition he serve 60 days in jail. He was not similarly situated with a person convicted of violating Health and Safety Code section 11377, subdivision (a), sentenced *to prison*, who would have been entitled to one-for-one conduct credits before repeal of former section 2933, subdivision (e). Also, equal protection ““does not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time.’ [Citation.]” (*People v. Floyd* (2003) 31 Cal.4th 179, 191.)

Our independent review of the record discloses no arguable issues.

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O’LEARY, P. J.

RYLAARSDAM, J.