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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.

RICHARD JAMES MAMOLA,

Defendant and Appellant.

G048135

(Super. Ct. No. 10SF0940)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Max De Liema, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

We appointed counsel to represent defendant Richard James Mamola on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel poses three possible issues, all three concerning defendant's credits. Defendant was given 30 days to file written argument in defendant's own behalf. That period has passed, and we have received no communication from defendant.

Defendant pled guilty to embezzlement of \$76,409.02 from a small retail business, a music store. The store owners spent four years paying off the debt that defendant "ran up," and the owners were no longer able to pay for their children's college educations, and were required to "withdraw funds from [their] retirement accounts."

The guilty plea form submitted to the court by the defense has blank spaces for both custody and good time/work time credits. When the matter was called by the court, and after hearing from the victims, the court immediately stated the law concerning credits had changed: "And I want to talk to counsel about the credits. This crime occurred prior to the change in credits, so he may be entitled to — we'll talk about it. But he may be only entitled to one-third credit rather than 50 percent credit once he starts his sentence. . . . But under the most recent decision, the crime alleged occurred prior to the October 11th of '11. He's only entitled to one-third credit."

The prosecutor was in the process of agreeing with the court that one-third was correct when defense counsel interrupted, stating it was half-time and "there's a case on that." Defense counsel continued: "My understanding is the law in the state, even if the crime was committed previous, that decision has already been reached and they're all getting half-time unless it's a violent or serious felony." The court responded: "All right. We can take a look at it." Defense counsel informed the court defendant was ready to be sentenced.

During sentencing, the court stated: “You’re entitled to credit for 125 days that you’ve actually served plus 125 days of good time/work time for a total of — of 200 — excuse me, 250 days.” The discussion about credits continued, and the court responded to defense counsel, “But I’m not giving him 50 percent. [¶] He’s getting one-third credits.” At which point, the court clerk, the court and counsel stated the following:

The clerk: “Is he 125 plus not 125?”

Defense counsel: “Be 125 plus - -”

The clerk: “62.”

Defense counsel: “Thank you.”

The court: “Right.”

The prosecutor: “All right. Thank you.”

The felony abstract of judgment states his total credits are 187 days, 125 for days served plus 62 conduct credits. But the document entitled terms and conditions of felony probation and mandatory supervision states defendant’s total credit is 250 days.

Penal Code section 1237.5 states: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, 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 clerk of the court.” There is no certificate of probable cause in the record on appeal.

In the case of a negotiated plea with specification of penalty, a certificate of probable cause is required because a defendant’s challenge to the sentence implicates the plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 79.) Moreover, defendant gave up his right to appeal. His guilty plea form states: “I waive and give up my right to appeal from any and all decisions and orders made in my case . . . . I waive and give up my right to

appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.”

A defendant need not comply with a certificate of probable cause if the appeal is based on grounds that arose after entry of the plea and do not affect the plea’s validity. (California Rules of Court, rule 8.304(b)(4)(B).) We can see from the record the issue arose prior to his guilty plea when the court brought the matter up in defendant’s presence, and defendant’s counsel assured the court the law favored the higher number of credits. The court responded “All right. We can take a look at it.”

We recognize the record here is confusing in some ways, but we also realize defendant was awarded the correct number of custody credits due him under the law. (Pen. Code, § 4019; *People v. Brown* (2012) 54 Cal.4th 314, 318; *People v. Culp* (2012) 100 Cal.App.4th 1278, 1283.) Nothing in the record before us indicates defendant entered his guilty plea based on a promise of more custody credits than he received or that the court violated a term of a bargain.

Defendant enjoyed a substantial benefit by having his potential exposure to incarceration reduced by two years. To the extent the trial court may have erred in not informing defendant he had a right to withdraw his plea, and we do not find this to be the case, any such error was harmless because defendant was not prejudiced. (*People v. DeFilippis* (1993) 9 Cal.App.4th 1876, 1879.) To the extent defense counsel might be accused of being incompetent for failure to press the claim about the number of credits or failure to advise defendant, and we do not find that to be the case either, that argument also fails. Defendant was not prejudiced by his counsel’s actions. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-689.)

To the extent an argument could be made that defendant would not have pled guilty but for a misrepresentation of a fundamental nature, that argument goes to the validity of his plea, and would require a certificate of probable cause, which defendant

did not obtain. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76.) We have examined the record and found no other arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.)

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.