Filed 12/4/13 P. v. Biggers CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MARCEL ANDRE BIGGERS, Defendant and Appellant.	G048442 (Super. Ct. No. 12NF1539) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joe T. Perez, Judge. Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

We appointed counsel to represent the defendant Marcel Andre Biggers 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. In an effort to assist this court with our independent review of the record, counsel provided this court pursuant to *Anders v. California* (1967) 386 U.S. 738 the following possible issue: whether defendant was properly sentenced. Defendant was given 30 days to file written argument in his own behalf. That period has passed, and we have received no communication from defendant. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.)

I

FACTS

Defendant was charged in a felony complaint with one count of committing a lewd act on a child under 14 years of age. (Pen. Code, § 288, subd. (a); all statutory references are to the Penal Code unless otherwise stated.) He originally entered a not guilty plea to the charge, but on April 19, 2012, defendant appeared in court with retained counsel, withdrew his not guilty plea, and entered a guilty plea pursuant to a plea bargain. The change of plea form contained the following factual basis for defendant's guilty plea: "In Orange County, California, on and between June 1, 2011 and [December] 1, 2011[,] I willfully, lewdly, and unlawfully committed a lewd and lascivious act upon and with the body of Jane Doe, who was 13 years old at the time, with the intent of arousing and gratifying my sexual desires and the sexual desires of Jane Doe."

The court advised defendant of the possible immigration consequences of a conviction, as well as his constitutional rights. The court found defendant read and understood his rights, understood the consequences of the plea, and found a factual basis for the guilty plea. The court sentenced defendant to six years in state prison pursuant to the plea bargain and awarded him 189 actual days, plus 28 conduct days credit for a total of 217 days presentence credit. (See § 2933.1, subd. (a).) The court also imposed a $40

court operation fees pursuant to section 1465.8, a $30 criminal conviction assessment fee pursuant to Government Code section 70373, subdivision (a)(1), the minimum restitution fine of $240 pursuant to section 1202.4, subdivision (b), and imposed and stayed a $240 parole revocation fine pursuant to section 1202.45. The court ordered defendant to register as a sex offender pursuant to section 290, prohibited any visitation between defendant and the victim pursuant to section 1202.05, and notified defendant he is prohibited from possessing a firearm.

Defendant filed a timely notice of appeal. He did not, however, seek or obtain a certificate of probable cause. (§ 1237.5.)

II

DISCUSSION

As defendant did not obtain a certificate of probable cause, he is precluded from raising any issue challenging the validity of his guilty plea. (§ 1237.5, subd. (a); *People v. Johnson* (2009) 47 Cal.4th 668, 677.) This is of no practical consequence in this matter because we have reviewed the record, including the change of plea form and the reporter's transcript of the change plea proceedings, and found no evidence having any tendency to indicate the guilty plea was unknowing or involuntary. Defendant told the judge neither he nor his family had been threatened in an effort to obtain a guilty plea and that he was entering his guilty plea for no other reason than the fact that he was, in fact, guilty.

The court sentenced defendant to six years in state prison, the agreed upon term of imprisonment. The crime defendant committed is punishable by one of three possible terms of imprisonment, three, six, or eight years in state prison. (§ 288, subd. (a).) The term imposed on defendant was proper. It is not only expressly provided for by the applicable statute, it was the term agreed on by defendant and the People. The court did not err in sentencing defendant to six years in state prison.

We find no arguable issues in connection with the fees and fines imposed by the court. (§§ 1202.4, subd. (b)(1) [minimum restitution fine of $240 on a felony conviction]; 1202.45, subd. (a) [parole revocation restitution fine required in same amount as restitution fine imposed under § 1202.4]; 1465.8, subd. (a) [$40 assessment required on every felony conviction]; Gov. Code, § 70373, subd. (a)(1) [$30 assessment required on every felony conviction].) Additionally, the law prohibits defendant from having visitation with his victim (§ 1202.05, subd. (a)), requires defendant to register as a sex offender (§ 290, subds. (b), (c)), and prohibits him from possessing a firearm (§ 29800, subd. (a)(1)).

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.