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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.

JOSEPH ROBIN PERRONE,

Defendant and Appellant.

G049039

(Super. Ct. No. 13HF2230)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andre Manssourian, Judge. Appeal dismissed.

Lynelle K. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Joseph Robin Perrone pled guilty to felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and admitted various prior conviction sentence enhancement allegations, all in a negotiated disposition while represented by counsel. The trial court then exercised its discretion and struck a prior serious or violent felony conviction (Pen. Code, §§ 667, subds. (d), (e)(1) & 1170.12, subds. (b), (c)(1)) for sentencing purposes only.

Perrone was placed on three years formal probation on various conditions, including a requirement that he enroll and complete a drug treatment program pursuant to Penal Code section 1210, all as agreed in the guilty plea form. Perrone then filed a timely notice of appeal, and thereafter he sought but did not obtain a certificate of probable cause as required by Penal Code section 1237.5.

After Perrone appealed we appointed counsel to represent him. Counsel filed a brief which set forth the facts and the disposition of the case. He did not argue against Perrone, but advised he had not found any issues to argue on Perrone's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) However, to assist us in our independent review of the record, he suggested one issue for us to consider under *Anders v. California* (1967) 386 U.S. 738. Perrone was given 30 days to file written argument in his own behalf. That period has passed and we have received no communication from him.

FACTS

Paragraph 29 of the guilty plea form signed by Perrone states: "In Orange County, California, on 7/16/13 I knowingly & unlawfully possessed a useable quantity of methamphetamine." Paragraph 15 of the guilty plea form states: "I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including. . . . I waive and give up my right to appeal from my guilty plea. 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."

DISCUSSION

Appellate counsel suggests we consider whether Perrone voluntarily waived his constitutional rights. But, as we noted above, Perrone did not obtain the certificate of probable cause required to appeal “from a judgment of conviction upon a plea of guilty or nolo contendere.” (Pen. Code, § 1237.5.) It specifies, “[n]o appeal shall be taken” unless, “[t]he defendant has filed with the trial court a written statement . . . showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings,” and “[t]he trial court has executed and filed a certificate of probable cause for such appeal” (Pen. Code, § 1237.5, subs. (a), (b).)

The Supreme Court has addressed the scope of Penal Code section 1237.5 often (see *People v. Mendez* (1999) 19 Cal.4th 1084; *People v. Lloyd* (1998) 17 Cal.4th 658; *People v. Panizzon* (1996) 13 Cal.4th 68), as have the Courts of Appeal (*People v. Young* (2000) 77 Cal.App.4th 827; *People v. Cole* (2001) 88 Cal.App.4th 850). Various courts have taken different approaches in making the ultimate decision to dismiss the appeal or allow the defendant to proceed with an appeal after a guilty plea.

The Supreme Court has articulated a test to be applied in such instances: “In *Panizzon*, we recognized that, even if it purportedly challenges the sentence only, a defendant’s appeal from a judgment of conviction entered on a plea of guilty or nolo contendere must be dismissed in the absence of a statement of grounds by the defendant and a certificate of probable cause by the trial court if, *in substance*, it challenges the validity of the plea. [Citation.] It does so if the sentence was part of a plea bargain. [Citation.] It does not if it was not [citation] — especially so if the claim or claims in question were ‘reserved as part of the plea agreement’ [citation].” (*People v. Lloyd*, *supra*, 17 Cal.4th at p. 665.)

There is no question that in substance Perrone challenges the validity of the guilty plea. “Further, even if it is assumed that defendant’s claim does not challenge the validity of the plea, the claim still is not reviewable on appeal because the terms of the

plea bargain preclude any appeal of the negotiated sentence.” (*People v. Panizzon*,
supra, 13 Cal.4th at p. 89.) Therefore, the appeal must be dismissed.

Regardless, we examined the entire record to determine if any arguable
issues are present and found none. (*People v. Wende*, *supra*, 25 Cal.3d at pp. 441-442;
People v. Johnson (1981) 123 Cal.App.3d 106, 111-112.)

DISPOSITION

The appeal is dismissed.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.