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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.

LANCE WILLIAM EDWARDS,

Defendant and Appellant.

G051042

(Super. Ct. No. 14HF1393)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Lance William Edwards was charged with felony vehicular evading arrest (Veh. Code, § 2800.2), felony possession of ammunition by a prohibited person (Pen. Code, § 30305), and misdemeanors for driving on a suspended or revoked license (Veh. Code, § 14601.1(a)) and resisting or obstructing an officer (Pen. Code, § 148). After his motion to suppress evidence pursuant to Penal Code section 1538.5 was denied, he pled guilty to all charges, in return for a midterm sentence of two years on both felonies (the second ran concurrent to the first) and suspended sentences on the misdemeanors.

Six weeks later, Edwards filed his notice of appeal. He also requested a certificate of probable cause. In that document, he said he was “coerced and threatened into taking a plea deal by my public defender.” Further explication indicated his public defender repeatedly told him he had “a zero percent chance” of acquittal and “scared me with more time than any of my charges even carry.” He said he eventually succumbed to her negativity and took an offer of two years incarceration, which was higher than the sixteen months he had initially been offered – a fact he considers indicative of the fecklessness of his representation. The trial judge denied the requested certificate of probable cause.

We appointed counsel to represent Edwards on appeal. Appellate counsel could not find an arguable legal issue in the record of Edwards’ case. He therefore filed with this court a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436), complying with *Anders v. California* (1967) 386 U.S. 738, by setting forth the facts of the case and the possible arguments he had investigated and abandoned, and explaining he could not find an appellate issue. We have reviewed the points he considered and examined the record for others. We find ourselves in agreement with him that there is no arguable issue on appeal.¹

¹ We notified appellant of the filing of the *Wende* brief and invited him to file his own brief. He did not do so.

Defendant having pled guilty, counsel's review concentrated on putative errors in the plea and sentencing process. This went nowhere because no certificate of probable cause had been obtained. Appellant has not suggested, his attorney could not conceive of, and we cannot imagine a way around that requirement on the facts of this case. "A defendant who has pleaded guilty or nolo contendere to a charge in the superior court, and who seeks to take an appeal from a judgment of conviction entered thereon, may not obtain review of so-called 'certificate' issues, that is, questions going to the legality of the proceedings, including the validity of his plea, unless he has complied with section 1237.5 of the Penal Code and the first paragraph of rule 31(d) of the California Rules of Court – which require him to file in the superior court a statement of certificate grounds as an intended notice of appeal within 60 days after rendition of judgment, and to obtain from the superior court a certificate of probable cause for the appeal within 20 days after filing of the statement and, hence, within a maximum of 80 days after rendition of judgment." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1088, fns. omitted.) Appellant having failed to do so – and in our opinion being unable to do so, there being no grounds therefore – he is precluded from such a challenge and appellate counsel correctly abandoned that as a ground of appeal.

In fact, without a certificate of probable cause, appellant may obtain review solely of so-called "noncertificate" issues. These are "postplea questions not challenging his plea's validity and/or questions involving a search or seizure whose lawfulness was contested pursuant to [Penal Code] section 1538.5." (*People v. Mendez, supra*, 19 Cal.4th at p. 1088.)

This is not a meaningless formality. The certificate of probable cause is designed for situations in which valid, contestable legal issues exist but a party, for whatever reason, wishes to plead guilty – often to take advantage of a lenient sentence such as the one appellant received. To distinguish those cases from ones in which there is no serious legal issue, we require the trial courts to screen such requests through the

certificate process. The trial court, having been there when the plea was entered, is well situated to evaluate the bona fides of issues that might be raised and avoid drains upon the public fisc in pursuit of quixotic arguments.

In his request for a certificate of probable cause, Edwards asserted inadequate assistance of counsel. He said his attorney had “scared me with more time than any of my charges even carry.” This seems to reflect a misunderstanding on Edwards’ part that his exposure was limited to the maximum sentence of his greatest charge, i. e., three years. In fact, he was facing an aggregate possible sentence of three years and eight months in prison, without regard to the misdemeanor sentences.

But the bigger problem with consideration of Edwards’ complaints about his attorney is that there is no appellate record supporting them. His complaints about the conduct of his attorney are not based upon any facts before us, and would have to be raised via writ of habeas corpus, which would allow the development of the facts he asserts in his request for a certificate of probable cause.

There is, however, another issue available for non-certificate appeal: review of the validity of a search or seizure contested under Penal Code section 1538.5 is available without a certificate of probable cause. (*People v. Lloyd* (1998) 17 Cal.4th 658, 663-664.) With that in mind, we examined carefully the transcript of the preliminary hearing in this case. It did not advance Edwards’ cause.

Edwards was observed driving a fully loaded U-Haul pickup truck on the Garden Grove Freeway at 1:15 in the morning. His headlights were not on. After following him for a mile, the police stopped him. He had no driver’s license or other identification. When asked to shut off the engine and step out of the car, Edwards refused and sped off. The chase that followed involved speeds as high as 100 mph, failing to stay within lanes, running red lights, exceeding posted speed limits on city streets and the maximum speed limit on freeways. And, sadly, Edwards never turned his headlights on.

All of this means the initial stop was justified, the ultimate stop and arrest were justified (Edwards' complaint that his conduct did not include the three separate Vehicle Code violations that would support a Vehicle Code section 2800.2 charge is clearly erroneous), and the Penal Code section 1538.5 motion heard below was properly denied.

So appellate counsel was correct that there are no arguable issues presentable on appeal in this case. Issuance of a certificate of probable cause rests within the sound discretion of the trial court, and we see nothing to indicate the trial court abused that discretion in this case. There was no record on which to hang an inadequate assistance of counsel claim, the Penal Code section 1538.5 motion was meritless, and our search of the record has turned up nothing else that would support an appeal.

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.