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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID EDWARD PALMER,

Defendant and Appellant.

H036979

(Santa Clara County
Super. Ct. No. C1094540)

Defendant, David Edward Palmer, was convicted by negotiated no contest plea of possession of 3, 4-methylenedioxy methamphetamine (MDMA) (Health & Saf. Code, § 11378). Pursuant to the plea agreement, the trial court suspended imposition of sentence and placed defendant on probation for three years with various terms and conditions, including that he serve nine months in county jail and pay a \$50 criminal lab analysis fee plus penalty assessments and a \$150 drug program fee plus penalty assessments.

On appeal, defendant contends that the conviction must be reversed and the matter remanded so that the trial court can make a proper inquiry into the factual basis for the plea. He further contends that the probation order must include a breakdown of all the penalty assessments ordered. We will affirm.

BACKGROUND

Defendant was charged by felony complaint filed December 9, 2010, with possession of MDMA (Health & Saf. Code, § 11378; count 1) and possession for sale of marijuana (Health & Saf. Code, § 11359; count 2). Although the complaint states that “attached and incorporated by reference are official reports and documents of a law enforcement agency,” the clerk of the superior court has filed a certificate stating that no attachments to the complaint can be found in the superior court file.

On March 18, 2011, defendant entered into a negotiated plea agreement whereby he pleaded no contest to count 1 on condition that count 2 be dismissed and that he serve nine months in county jail. On May 20, 2011, pursuant to the negotiated plea agreement, the court suspended imposition of sentence and placed defendant on probation for three years with various terms and conditions, including that he serve nine months in county jail and pay a \$50 criminal lab analysis fee plus penalty assessments and a \$150 drug program fee plus penalty assessments.

Defendant filed a timely notice of appeal. On October 20, 2011, this court granted defendant leave to file an amended notice of appeal and a request for certificate of probable cause. Defendant filed the amended notice of appeal and request for certificate of probable cause on October 28, 2011, and the trial court granted the request for a certificate of probable cause on November 2, 2011.

DISCUSSION

Factual Basis for the Plea

On March 18, 2011, after defendant entered his no contest plea to count 1, the prosecutor voir dired defendant regarding his plea. During the voir dire, the prosecutor asked defendant, “Have you discussed the elements of the crime and the defenses with your attorney?” Defendant responded, “Yeah.” The prosecutor asked, “Are you satisfied with her advice?” Defendant responded, “Yes.” The prosecutor asked, “Do you stipulate, [counsel], there’s a factual basis for [the] plea as the People do?” Defendant’s

counsel responded, “Yes, I do stipulate.” The prosecutor asked, “And do you also waive your preliminary examination . . . ?” Defendant responded, “Yes.” The prosecutor waived a preliminary examination as well, and both parties waived a probation report.

At the end of the voir dire, the court stated that it found “responses to the voir dire to the District Attorney had been intelligently given and to the extent that there were stipulated rights they were also knowingly [and] intelligently entered into by the defendant.”

On appeal, defendant contends that the conviction must be reversed and the matter remanded to allow the trial court to make a proper inquiry into the factual basis for the plea. He argues that a bare stipulation by the parties that there is a factual basis for a plea is insufficient to satisfy the requirements of Penal Code section 1192.5¹ and *People v. Holmes* (2004) 32 Cal.4th 432, and, because a preliminary examination and a probation report were both waived, there is nothing in the record to support a factual basis in this case.

The People contend that the plea was proper. “Where the parties stipulate to a fact at trial, the fact finder must regard that fact as proved.” “Where, as here, the record shows the defendant discussed the charge and possible defenses with counsel and was satisfied with her advice, then stipulated there was a factual basis for the plea, the stipulation at the very least is a waiver of a reference to a particular document in the record, and satisfies section 1192.5.”

“In order to appeal after a conviction by plea of guilty or nolo contendere, a defendant must obtain a certificate of probable cause from the trial court. (§ 1237.5.) ‘Issues cognizable on an appeal following a guilty plea are limited to issues based on “reasonable constitutional, jurisdictional, or other grounds going to the legality of the

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

proceedings” resulting in the plea. (§ 1237.5; [citation].) The issuance of a certificate of probable cause pursuant to section 1237.5 does not operate to expand the grounds upon which an appeal may be taken as that section relates only to the “procedure in perfecting an appeal from a judgment based on a plea of guilty.” [Citations.]’ [Citation.]” (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364 (*Voit*).

“In order to ensure that the entry of a plea is voluntary, California requires an inquiry by the trial court in some cases. ‘When taking a conditional plea of guilty or nolo contendere (hereafter no contest) to an accusatory pleading charging a felony, a trial court is required by Penal Code section 1192.5 to “cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.” ’ (*People v. Holmes*[, *supra*,] 32 Cal.4th [at p.] 435 . . . , fn. omitted.) ‘While there is no federal constitutional requirement for this factual basis inquiry, the statutory mandate of section 1192.5 helps ensure that the “constitutional standards of voluntariness and intelligence are met.” [Citation.]’ [Citation.] The inquiry also protects against an innocent person entering a guilty plea and creates a record against possible appellate or collateral attack. [Citation.]” (*Voit, supra*, 200 Cal.App.4th at p. 1365.)

“ ‘[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court’s acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion.’ ([*People v.*] *Holmes, supra*, [32 Cal.4th] at p. 443.)” (*People v. Marlin* (2004) 124 Cal.App.4th 559, 572 (*Marlin*).

“We do not believe that a plea of guilty or no contest forecloses a defendant from challenging [on appeal] the procedure that resulted in the plea. A trial court’s alleged complete failure to conduct the required [factual basis] inquiry does not concern the defendant’s guilt or innocence or the sufficiency of the evidence of guilt.” (*Voit, supra*, 200 Cal.App.4th at p. 1369, italics omitted.) “[I]n light of the policies served by the

inquiry requirement, a failure to make *any* inquiry, ‘while not a constitutional or jurisdictional requirement, is one of the “other” grounds going to the legality of the proceedings in the trial court.’ (*Marlin, supra*, 124 Cal.App.4th 559, 571.)” (*Voit, supra*, at p. 1369.) “Whether there was an inquiry of the kind required by the statute is a procedural question.” (*Ibid.*)

“On the other hand, when the trial court does make an inquiry on the record as to the factual basis for a plea, an appellate claim that the inquiry was not ‘sufficient’ or ‘adequate’ is often, as it was in *Marlin*, essentially a challenge not to the trial court’s process but to its ultimate conclusion that there was a factual basis for the plea. In such a case, the defendant’s position is concerned with the sufficiency of the evidence of his or her guilt. A defendant who belatedly disputes the existence of evidence of his or her guilt is making a substantive, not a procedural, claim.” (*Voit, supra*, 200 Cal.App.4th at p. 1370.)

A defense counsel’s stipulation that there is a factual basis for defendant’s plea “must be regarded as an admission by defendant [when it is] made in defendant’s presence with defendant’s apparent assent. It is ‘settled that a party is bound by a stipulation or admission in open court of his counsel, and, except where a constitutional proscription is involved, he cannot mislead the court by seeming to take a position on the issues and then disputing or repudiating the position on appeal.’ [Citation.]” (*Voit, supra*, 200 Cal.App.4th at p. 1372, fn. 14.)

In this case, in response to the prosecutor’s inquiry, defendant stated on the record in open court that he had reviewed the charges against him and his possible defenses with his counsel, and that he was satisfied with his counsel’s advice. His counsel and the prosecutor then stipulated that there was a factual basis for defendant’s no contest plea. The court found that defendant’s answers to the prosecutor’s inquiry and the stipulations were knowingly and intelligently entered into. On this record, defense counsel’s stipulation that there was a factual basis for the plea “must be regarded as an admission

by defendant [as it was] made in [open court in] defendant's presence with defendant's apparent assent." (*Voit, supra*, 200 Cal.App.4th at p. 1372, fn. 14.) Therefore, defendant's contention that the factual basis inquiry was not sufficient is "essentially a challenge not to the trial court's process but to its ultimate conclusion that there was a factual basis for the plea." (*Voit, supra*, at p. 1370.) However, the trial court's acceptance of the guilty plea after an inquiry into the factual basis for the plea can only be reversed for an abuse of discretion. (*Marlin, supra*, 124 Cal.App.4th at p. 572.) Given defendant's and the prosecutor's stipulation to a factual basis, we see no reason to reverse the judgment and remand the matter to allow another inquiry into the factual basis for defendant's plea.

Penalty Assessments

The court ordered defendant to pay a \$50 criminal lab analysis fee, plus penalty assessments, and a \$150 drug program fee, plus penalty assessments, as a condition of his probation. The amended order of probation filed August 18, 2011, states that the penalty assessments for the \$50 criminal lab analysis fee are \$150, and the penalty assessments for the \$150 drug program fee are \$450. In his opening brief on appeal, defendant contends that the order of probation does not, but should, include the correct amount of the penalty assessments as well as a breakdown of the statutory basis for the penalty assessments. In his reply brief, defendant acknowledges that the probation order does include the correct amount of the penalty assessments but continues to contend that the order should also include a "specific breakdown" of the statutory basis for each of the ordered penalty assessments. Defendant requests that this court remand the matter to the trial court so that the order of probation can be amended to include "a detailed breakdown of the statutory bases for the assessments."

The People contend that, because the "penalty assessments are correctly identified statute by statute in the chart in [defendant's] [o]pening [b]rief," and the total amount of

the penalty assessments included in the order of probation is correct, no remand is warranted.

We acknowledge that, in order to facilitate review of the penalty assessments imposed in a case, as well as to assist in collection efforts, it is important for the trial court to recite the statutory bases for all penalty assessments imposed. (See *People v. Taylor* (2004) 118 Cal.App.4th 454, 456-460; *People v. High* (2004) 119 Cal.App.4th 1192, 1200.) However, in this era of budget cuts and limited judicial resources, given that defendant's counsel has correctly identified the "specific breakdown" of the statutory bases for the penalty assessments and has agreed that the amounts included in the order of probation are correct, we see no reason to remand the matter to the trial court for an amendment to the order of probation.

DISPOSITION

The judgment (order of probation) is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

GROVER, J.*

*Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.