

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CLARENCE JOSEPH MOORE,

Defendant and Appellant.

2d Crim. B278557  
(Super. Ct. No. 15F-11239)  
(San Luis Obispo County)

Appellant Clarence Joseph Moore was charged with conspiring to bring a cell phone into prison. (Pen. Code, §§ 182, subd. (a)(1), 4576.)<sup>1</sup> Four prior robbery convictions (§ 211) were alleged as prior “strikes.” (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c).)

Appellant represented himself in the trial court. Following a preliminary hearing at which he was held to answer, appellant moved to dismiss the case pursuant to section 995. The motion was denied.

---

<sup>1</sup> All further statutory references are to the Penal Code.

Appellant also moved to dismiss on the basis that a corrections officer reviewed a file that appellant had prepared to assist him in preparing his case. The trial court denied the motion, finding that the officer's review of the file for contraband was reasonable and did not prejudice appellant's preparation.

Appellant subsequently pled no contest to a charge of attempted receiving stolen property (§§ 496, subd. (a), 664), in exchange for an eight-month sentence concurrent with the sentence he was then serving. While imposing the eight-month sentence, the trial court stated its understanding that the sentence would be reduced by 50 percent for in-prison conduct credits.

Thereafter, the parties discovered that there is no such crime as attempted receiving stolen property. Appellant's plea was withdrawn, and he entered a new plea of no contest to an amended charge of attempted grand theft (§§ 487, subd. (a), 664). The eight-month prison sentence remained unchanged.

In October 2016, appellant sent two letters to the trial court expressing his concern that his eight-month sentence would be served at 85 percent instead of 50 percent, and that this would cause his release date to be delayed by six weeks. He advised that the California Department of Corrections and Rehabilitation had informed him that his credit reduction was limited to 15 percent because he "is serving a term with multiple offenses . . . in which one offense . . . is a violent offense committed on or after September 21, 1994." Appellant stated: "I made an agreement in court to serve the 8 months at 50 [percent], not 85 [percent], and if that agreement isn't being honored then I would like to retract my plea." No action was taken on this request.

Appellant filed a notice of appeal from the judgment based on the trial court's purported error in denying his two motions to dismiss. The court denied his request for a certificate of probable cause.

According to the trial court's summary of the evidence, the police found text messages on cell phones in the possession of persons who were not in prison. Those text messages supported the prosecution's view that appellant was using a cell phone while he was in state prison.<sup>2</sup>

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Appellant responded by filing a two-page handwritten supplemental brief in which he claims the trial court erred by denying his motions to dismiss.

Because a challenge to the trial court's rulings on the motions to dismiss are addressed to "irregularities in the preliminary examination procedures which are not jurisdictional in the fundamental sense" (*People v. Pompa-Ortiz* (1980) 27 Cal.3d 519, 529), they require a certificate of probable cause and, in the absence of such a certificate, are not reviewable on appeal. (See § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1088-1089; *People v. Hollins* (1993) 15 Cal.App.4th 567, 571.)

In addition, a defendant must obtain a certificate of probable cause in order to appeal from the denial of a motion to

---

<sup>2</sup> Although there was a preliminary hearing, the transcript of that hearing is not in the record on appeal.

withdraw a guilty or no contest plea, even though such a motion involves a proceeding that occurs after the plea. (§ 1237.5; *People v. Johnson* (2009) 47 Cal.4th 668, 678-679.) Thus, to the extent the trial court implicitly denied appellant's request to "retract" his no contest plea, that decision also is not reviewable on appeal.

We have examined the entire record to determine if there is any issue present which does not require a certificate of probable cause. We are satisfied that appellant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Michael L. Duffy, Judge  
Superior Court County of San Luis Obispo

---

California Appellate Project, Jonathan B. Steiner and  
Richard B. Lennon for Defendant and Appellant.

No appearance for Plaintiff and Respondent.