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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL BANGS,

Defendant and Appellant.

B236451

(Los Angeles County
Super. Ct. No. TA117529)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Joseph Cheroske, Judge. Affirmed.

Nathaniel Bangs, in pro. per.; and Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant, Nathaniel Bangs, appeals from a judgment entered following a negotiated plea. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Early in the morning on March 29, 2011, Los Angeles County Sheriff's deputies on patrol observed a Chevrolet Monte Carlo that had been reported stolen. The deputies began following the car as it turned into an alley. The Monte Carlo stopped and defendant jumped out, holding a gun. Defendant fled and the deputies gave chase on foot. At one point defendant turned, pointed his gun at the deputies, and fired. The deputies fired back. Numerous shots were exchanged before defendant managed to get away. The deputies each independently identified defendant's picture in a six-pack photographic lineup.

An information filed on June 9, 2011 charged defendant with two counts of attempted willful, deliberate and premeditated murder of a peace officer (Pen. Code, §§ 187, subd. (a), 664) and one count of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)). As to counts 1 and 2, the information alleged defendant personally used a firearm within the meaning of section Penal Code section 12022.53, subdivisions (b) and (c).¹ As to all counts, it was alleged defendant had previously served one separate prison term for a felony (§ 667.5, subd. (b)). Defendant pleaded not guilty to all counts and denied the special allegations.

On August 8, 2011, the People amended the information to charge defendant in count 4 with assault with a firearm on a peace officer (§ 245, subd. (d)(1)) with a firearm-use allegation (§ 12022.5, subd. (a)). Defendant thereafter waived his right to trial and

¹ All further statutory references are to the Penal Code.

entered a plea of no contest to count 4 and admitted the firearm-use allegation. As part of the negotiated agreement, defendant was to be sentenced to an aggregate state prison term of 11 years, consisting of the upper eight-year term for assault with a firearm on a peace officer, plus the lower term of three years for the firearm-use enhancement.

At the time defendant entered his plea, he was advised of his constitutional rights and the nature and consequences of his plea. Defendant stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and admission, and accepted the terms of the negotiated agreement. Defendant also waived his right to challenge any defect in his plea agreement on appeal.

The trial court found the plea was freely and voluntarily entered and there was a factual basis for the plea. Defense counsel joined in the waivers of defendant's constitutional rights and stipulated to a factual basis for the plea. The court then sentenced defendant in accordance with the plea agreement to an aggregate state prison term of 11 years. The remaining counts were dismissed on the People's motion. The court imposed a \$1,200 restitution fine (§ 1202.4, subd. (b)) and imposed and suspended a \$1,200 parole revocation fine (§ 1202.45).

On September 28, 2011, defendant filed a notice of appeal in propria persona, claiming he wished to withdraw his plea because it was not knowingly and intelligently made. On his notice of appeal, defendant checked the boxes indicating he was challenging "the validity of the plea or admission" and "the sentence or other matters occurring after the plea." The trial court denied his request for a certificate of probable cause.

Defendant timely appealed. We appointed counsel to represent defendant on appeal.

DISCUSSION

After examination of the record, defendant's counsel filed an opening brief in which no issues were raised. On January 9, 2012, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. After being granted an extension of time, on March 22, 2012 defendant submitted a supplemental brief, in which he contended there was an improper dual use of facts to justify the imposition of the upper term for the substantive offense and a consecutive term for the enhancement. He also asserted that the trial court erroneously failed to state its reasons for imposing the upper term for the substantive offense and for imposing a consecutive sentence for the firearm-use enhancement. Finally, defendant claimed the trial court ordered him to pay an "excessive" restitution fine.

Defendant expressly waived his right to challenge his plea on appeal. Furthermore, by contesting his sentence, defendant is essentially attacking the validity of his plea without a certificate of probable cause, and his notice of appeal is inoperative to that extent. (§ 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) As for defendant's contention the restitution fine of \$1,200 was excessive, he has forfeited this claim by failing to object to the fine at the time it was imposed. (*People v. Tillman* (2000) 22 Cal.4th 300, 303.)

We have examined the entire record and are satisfied defendant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.