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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON RUSSELL MILLER,

Defendant and Appellant.

B241950

(Los Angeles County
Super. Ct. No. LA066460)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Martin L. Herscovitz, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Aaron Russell Miller pled no contest to one count of theft (Pen. Code, § 484e, subd. (d)), and one count of possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). Defendant also admitted as true the special allegations as to one prior qualifying strike and three prior prison terms (Pen. Code, §§ 667, 667.5, 1170.12). The court imposed a state prison sentence of 32 months, calculated as follows: the lower term of 16 months on count 1, doubled because of the strike. A concurrent 32-month sentence was imposed on count 2. Defendant was awarded eight days of custody credits and ordered to pay various fines and fees.

Defendant did not seek or obtain a certificate of probable cause. Defendant filed a timely notice of appeal, raising only noncertificate issues, specifically denial of his preplea motion to suppress under Penal Code section 1538.5, and the partial denial of his motion to strike under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) and section 1385.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his evaluation of the record. Counsel further declared that he advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days.

Defendant filed a timely supplemental brief with the court. Defendant requests that new appellate counsel be appointed. Defendant's one-sentence request to have new appellate counsel substituted into the case because defendant apparently disagreed with current counsel's filing of a *Wende* brief does not state any basis for relief. Appellate counsel's decision to follow the procedures set forth in *Wende* does not amount to ineffective assistance, and defendant has failed to establish any other conduct warranting the substitution of counsel.

Defendant further claims the amended information erroneously charged him in count 1 with a violation of subdivision (d) of Penal Code section 484e, when there was

no evidence of a violation other than for subdivision (c) of the statute, which is a misdemeanor. To the extent defendant's argument challenges the validity of the plea, no review is available as defendant did not obtain a certificate of probable cause. (§ 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1096-1097; *People v. Panizzon* (1996) 13 Cal.4th 68, 76.) Moreover, defendant's argument regarding count 1 arguably contests the factual basis for his plea to that count which is not cognizable on appeal. (*People v. Borland* (1996) 50 Cal.App.4th 124, 127-128.) In either event, we do not consider it.

Defendant also argues his *Romero* motion should be reconsidered. In support of his *Romero* motion, defendant presented evidence that while out on bail pending resolution of the case, he was successfully working two jobs and attending Narcotics Anonymous meetings on a weekly basis. The court granted defendant's motion in part, striking one of the two strikes, as well as all three prior prison terms. The court reasoned that while it was laudable defendant had recently made efforts to turn his life around warranting the low term sentence and the striking of one strike, it was insufficient to warrant the striking of both strikes. We find no abuse of discretion in the partial denial of the *Romero* motion. (See *People v. Williams* (1998) 17 Cal.4th 148, 158-161.)

Defendant's notice of appeal raises the issue of the court's denial of defendant's preplea motion to suppress, but defendant's supplemental brief does not argue any impropriety regarding the motion to suppress. At the hearing on defendant's motion to suppress evidence, Los Angeles Police Officer Katherine O'Brien testified she was on patrol with her partner on November 3, 2010, performing random license plate number checks for outstanding warrants. In checking the plate number of the Lincoln Navigator defendant was driving, an outstanding warrant on a speeding ticket was discovered. Officer O'Brien and her partner pulled defendant over. Upon approaching the vehicle, Officer O'Brien saw the driver's side window was partially down and she could smell marijuana coming from inside the car. She asked defendant to roll down the window and provide identification. Defendant stated he did not have a driver's license. Defendant and his passenger were asked to get out of the car. As they got out of the car, Officer

O'Brien noticed a baggie of a leafy substance, which appeared to be marijuana, on the center console. Defendant was searched and a baggie of white powder and a stolen credit card were found on him. It was also determined that defendant did not own the Lincoln Navigator. There appears to be no basis in the record for disturbing the ruling denying the motion to suppress. (See *People v. Souza* (1994) 9 Cal.4th 224, 233.)

We have examined the entire record and are satisfied that appointed counsel fully complied with his responsibilities in assessing whether or not any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment of conviction is affirmed.

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GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.