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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE TERRELL WINCE,

Defendant and Appellant.

B281266

(Los Angeles County  
Super. Ct. No. MA068329)

THE COURT:\*

Appellant Dwayne Terrell Wince appeals from a judgment entered after a plea of no contest, following a hung jury on one of two counts. Appellant was charged with second degree robbery

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\* ASHMANN-GERST, Acting P. J., HOFFSTADT, J., GOODMAN, J.†

† Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

(Pen. Code, § 211)<sup>1</sup> (count 1) and assault with a deadly weapon (§ 245, subd. (a)(1) (count 2). As to both counts, the information alleged enhancements for gang activity (§ 186.22, subd. (b)(1)(C)) and personal infliction of great bodily injury (§ 12022.7, subd. (a)). The information also alleged that appellant previously had been convicted of burglary (§ 459), which qualified as a strike prior (§§ 667.5, subds. (b)-(i), 1170.12), a serious felony prior (§ 667, subd. (a)(1)), and a prison prior (§ 667.5, subd. (b)).

A jury found appellant guilty of count 2 (assault with a deadly weapon) and found true the allegation that he personally inflicted great bodily injury, but found not true the gang enhancement. The jury deadlocked on the robbery count (by a vote of 10 guilty, two not guilty). The trial court declared a mistrial on the robbery count.

Appellant entered into a plea agreement for a stipulated term of 14 years on the robbery count. He admitted the gang enhancement and the prior strike allegation attached to that count. The parties stipulated to a factual basis for the plea, based on the preliminary hearing transcript and the probation report. The jury's verdict on the count for assault with a deadly weapon was set aside, and the enhancements and allegations attached to that count were dismissed.

Appellant agreed to waive his "appellate rights for all purposes," including "the current plea, the current sentence, and the setting aside of those verdicts, for everything."

The trial court imposed the stipulated 14-year sentence, comprised of the low term of two years for the robbery conviction,

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

doubled to four years for the strike prior, plus 10 years for the gang enhancement.

Appellant filed a notice of appeal, in pro. per., without a certificate of probable cause, challenging the length of the sentence imposed for the two enhancements on the robbery count.

We appointed counsel for appellant on appeal. After examination of the record, counsel filed an “Opening Brief” in which no arguable issues were raised. On September 8, 2017, we advised appellant that he had 30 days within which to personally submit any contentions or arguments that he wished us to consider.

It is well established that a “challenge to the court’s authority to impose an agreed upon maximum sentence is a challenge to the validity of the plea requiring a certificate of probable cause.” (*People v. Rushing* (2008) 168 Cal.App.4th 354, 359-360; §§ 1237, 1237.5; Cal. Rules of Court, rule 8.304(b)(4).) Appellant agreed to the imposed sentence of 14 years. Indeed, he could have received an even longer 20-year sentence had the trial court sentenced him to the maximum base term of five years for robbery. (§ 213, subd. (a)(2).)

Because appellant is challenging the validity of his plea in the absence of a certificate of probable cause, his appeal cannot lie. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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