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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DORADO,

Defendant and Appellant.

B229915

(Los Angeles County
Super. Ct. No. LA061993)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barry A. Taylor, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Dismissed.

Mark Yanis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, and Sonya Roth, Deputy Attorney General, for Plaintiff and Respondent

Defendant Anthony Dorado appeals from the judgment entered following his negotiated no contest plea to several offenses. Appellant contends he is entitled to withdraw his plea because he was inadequately admonished regarding the effect of his waiver and did not properly waive his constitutional rights. We dismiss the appeal for appellant's failure to secure a certificate of probable cause.

BACKGROUND

Because the appeal involves a question of law, we need not recite the underlying facts in detail. In essence, appellant and several members of a street gang were alleged to have committed a home invasion robbery of several victims at gunpoint.

An information charged appellant with home invasion robbery, in violation of Penal Code section 211¹ (counts 1-3), and one count of attempted home invasion robbery, in violation of sections 664 and 211 (count 4). It was alleged in counts 1 through 4 that the offenses were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(4)), and that a principal was armed with and personally used a shotgun (§ 12022, subds. (a)(1), (b), (e)(1).) In counts 1 through 4 the information also alleged that appellant personally used a firearm in the commission of the offenses. (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a).)

Prior to trial, pursuant to a negotiated plea agreement, appellant pleaded no contest to counts 1 and 2, and pleaded true to the firearm enhancement as to count 1 (§ 12022.53, subd. (b)). The court found appellant guilty on counts 1 and 2, found the offense in count 1 to be in the first degree, and found the offense in count 2 to be in the second degree. The remaining counts and allegations were dismissed.

Appellant was sentenced to a total of 20 years in state prison, consisting of the upper term of nine years on count 1, the middle term of one year for count 2 (to run concurrent with count 1), plus 10 years for the firearm allegation, to run consecutively.

¹ Statutory references are to the Penal Code.

Appellant was given presentence custody credits, and ordered to pay various fees and fines.

Appellant filed a notice of appeal and requested a certificate of probable cause contending he received ineffective assistance of counsel because his trial attorney either failed to request that his trial be severed from that of his codefendants, or had done so during a hearing at which appellant had not been present. Appellant's request for a certificate of probable cause was denied.

DISCUSSION

The Attorney General maintains this appeal must be dismissed because the trial court denied appellant's application for a certificate of probable cause. We agree.

A defendant who pleads guilty or no contest generally may not appeal a judgment of conviction unless he timely files a statement with the trial court "showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings," and obtains a certificate of probable cause for the appeal. (§ 1237.5, subd. (a); Cal. Rules of Court, rule 8.304(b); *People v. Mendez* (1999) 19 Cal.4th 1084, 1096.) "If the challenge is in substance an attack on the validity of the plea, defendant must obtain a certificate of probable cause. [Citation.]" (*People v. Emery* (2006) 140 Cal.App.4th 560, 565.) The California Supreme Court's decisions in *Mendez*, at p. 1098 and *People v. Panizzon* (1996) 13 Cal.4th 68, 89, fn. 15, emphasize the need for strict compliance with section 1237.5 and Cal. Rules of Court, rule 31(d) (now Cal. Rules of Court, rule 8.304(b)).

"The purpose of section 1237.5 is 'to create a mechanism for trial court determination of whether an appeal raises *any nonfrivolous* cognizable issue, i.e., any nonfrivolous issue going to the legality of the proceedings. Before the enactment of section 1237.5, the mere filing of a notice of appeal required preparation of a record and, in many cases, appointment of counsel; only after expenditure of those resources would an appellate court determine whether the appeal raised nonfrivolous issues that fell within the narrow bounds of cognizability. Section 1237.5 was intended to remedy the unnecessary expenditure of judicial resources by preventing the prosecution of frivolous

appeals challenging convictions on a plea of guilty.’ [Citation.]” (*People v. Brown* (2010) 181 Cal.App.4th 356, 359.)

“There are two exceptions to the requirement for a certificate of probable cause for an appeal after a plea of guilty or nolo contendere. The first applies where the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under section 1538.5, subdivision (m). (Cal. Rules of Court, rule 8.304(b)(4)(A).) . . . [¶] The second exception is where the defendant is not attempting to challenge the validity of his or her plea, ‘but is asserting only that errors occurred in the subsequent adversary hearings conducted by the trial court for the purpose of determining the degree of the crime and the penalty to be imposed.’ [Citations.]” (*People v. Brown, supra*, 181 Cal.App.4th at p. 360.) Appellant does not address his failure to secure a certificate of probable cause, nor does he argue that this action falls within either exception.

Appellant filed a notice of appeal seeking to withdraw his plea based on the alleged ineffective assistance of his trial attorney (failure to move to sever appellant’s trial). The trial court denied his request. He has abandoned that assertion and now seeks to attack the validity of his plea asserting he was inadequately admonished regarding the effect of his waiver and therefore did not properly waive his constitutional rights when he entered his plea. Appellant’s challenges to the adequacy of the admonitions constitute an attack on the validity of his plea. They may not be raised on appeal without securing a certificate of probable cause. In *People v. Panizzon, supra*, 13 Cal.4th 68, the Supreme Court observed that a defendant’s claim that he was inadequately admonished regarding the waiver of his appellate rights contained in the plea agreement was “clearly subject to section 1237.5” under *People v. Kaanehe* (1977) 19 Cal.3d 1, 8. (*Pannizzon*, p. 76, fn. 6.) Appellant’s challenge to the validity of and request to withdraw his plea falls squarely within the scope of section 1237.5; his claims are not cognizable on appeal absent a certificate of probable cause. Accordingly, the appropriate remedy is to dismiss the appeal. (*People v. Mendez, supra*, 19 Cal.4th at p. 1099 [explaining that appellate court may not proceed to merits but must order dismissal of appeal where defendant fails

to secure certificate of probable cause]; *People v. Puente* (2008) 165 Cal.App.4th 1143, 1150.)²

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

² We are not in a position to determine whether the failure of Dorado's trial counsel to request and secure a certificate of probable cause based on the purportedly inadequate admonition constituted ineffective assistance of counsel. His remedy, if any, to establish whether the conduct and decisions of his trial counsel constitute ineffective assistance would be to obtain such a determination by filing a petition for writ of habeas corpus.