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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.

ERIC WAYNE BROWNE,

Defendant and Appellant.

B240820

(Los Angeles County
Super. Ct. No. LA068326)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Michael V. Jesic, Judge. Affirmed.

Eric Wayne Browne, in pro. per.; Jonathan B. Steiner and Richard B. Lennon,
under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL BACKGROUND

On June 14, 2011, defendant was observed by security at a Marshalls store on Ventura Boulevard placing items in a shopping cart near the exit door. Defendant was observed in a security video removing items, which had a value of approximately \$140, from their packaging and removing security tags from those items. Defendant pushed the shopping cart out of the store. A Marshalls' loss prevention officer followed defendant out the door and asked defendant to stop and speak to him about the items in the cart. Defendant responded he had not taken anything, pushed the cart towards the loss prevention officer, and ran away. Defendant's wallet, containing his identification, fell out of his pocket and was recovered.

PROCEDURAL HISTORY

An information filed October 27, 2011 charged defendant with one count of petty theft with three prior convictions in violation of Penal Code section 666, subdivision (a).¹ The information further alleged defendant had six prior felony convictions for which he served a prison term within the meaning of section 667.5, subdivision (b).

On January 26, 2012, while represented by counsel, pursuant to a waiver of his trial rights, defendant entered a plea of guilty and admitted the prior conviction allegations. On March 7, 2012, the trial court sentenced defendant to two years in state prison, sentence to be served in county jail pursuant to section 1170, subdivisions (h)(1) and (h)(2), with the term to run concurrently with his sentence in case nos. GA070792 and GA084170.²

On March 7, 2012, defendant filed a petition for habeas corpus with the trial court challenging the conduct of the trial, his sentence, and the conditions in the jail. The trial court denied the petition.

¹ All statutory references herein are to the Penal Code unless otherwise noted.

² Defendant has separately appealed his convictions in those cases.

On April 25, 2012, defendant requested a certificate of probable cause on the grounds that (1) the district attorney had not returned his property, as agreed; (2) counsel was ineffective in advising on sentencing; (3) counsel failed to obtain evidence, leaving defendant with no choice but to take the plea bargain offered; (4) counsel failed to challenge the security video; and (5) problems with retention of appointed counsel. The trial court denied defendant's request.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On August 14, 2012, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. On September 17, 2012, defendant filed a handwritten letter brief in which he states that the prosecution failed to disclose exculpatory evidence under *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215]; he was unable to obtain investigative assistance to uncover evidence; and his personal property, taken when he was arrested, was not returned to him.³ Although these claims do not present arguable issues, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 120–121, we explain the reasons they fail.

First, a defendant who pleads guilty or nolo contendere is required to request and obtain a certificate of probable cause from the superior court to challenge the validity of his plea. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) Absent a certificate of probable cause, a defendant may appeal from a plea of guilty on non-certificate grounds if the notice of appeal states that the appeal is based on “[t]he denial of a motion to suppress evidence under . . . section 1538.5” (Cal. Rules of Court, rule 8.304(b)(4)(A)) or is on “[g]rounds that arose after entry of the plea and do not affect the plea’s validity” (Cal. Rules of Court, rule

³ These contentions appear to relate to defendant’s appeal in case nos. GA070792 and GA084170, but we nonetheless address them here.

8.304(b)(4)(B); see *People v. Mendez*, *supra*, 19 Cal.4th at p. 1096, citing former Cal. Rules of Court, rule 31(d), now, in pertinent part, Cal. Rules of Court, rule 8.304(b)(4)).

Thus, to the extent defendant challenges the failure to disclose exculpatory evidence, his inability to uncover evidence at trial, or procure a use of force expert, these are issues that arose preplea and are barred by the trial court's denial of his certificate of probable cause. To the extent defendant claims that the district attorney or the Los Angeles Police Department lost his personal property or failed to return it after promising to do so as part of his plea agreement. The proper procedure for him is to file a claim with those entities or a petition for a writ of habeas corpus or both.

We have examined the entire record and are satisfied that defendant's attorneys have fully complied with their responsibilities and that no arguable issues exist. (*People v. Kelly*, *supra*, 40 Cal.4th at pp. 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.