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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.

DERRICK MUNZEL WRIGHT,

Defendant and Appellant.

B280185

(Los Angeles County
Super. Ct. No. TA134554)

THE COURT*:

Derrick Munzel Wright (defendant) appeals from the trial court's order revoking his probation. We appointed counsel to represent him on this appeal.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requested this court to independently review the record on appeal to determine whether any arguable issues exist.

* ASHMANN-GERST, Acting P.J. CHAVEZ, 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.

We sent a notice to defendant, advising him he had 30 days in which to personally submit any contentions or issues which he wished us to consider. He has submitted supplemental briefs in which he contends (1) he did not commit the charged crimes and did not understand that he was pleading no contest to all six charges and (2) there is insufficient evidence to support the finding that he violated his probation.¹ Defendant's first claim is not cognizable on appeal. There is substantial evidence to support the trial court's finding that defendant violated his probation. We affirm the trial court's order.

BACKGROUND

Defendant was charged with one count of making criminal threats (Pen. Code, § 422, subd. (a)),² one count of exhibiting a firearm (§ 417, subd. (a)(2)(b)), two counts of possession of a firearm by a felon (§ 29800, subd. (a)(1)) and two counts of possession of ammunition (§ 30305, subd. (a)(1)). On August 25, 2014, defendant rejected the prosecutor's offer of 16 months in

¹ Only defendant's July 24, 2017 letter brief was filed within 30 days of our notice. On August 14, 2017, defendant filed a second letter brief, which essentially elaborated on the first brief. We consider the contentions in those two briefs. On August 21, 2017, we received a document entitled "Motion to Withdraw Plea of Guilty" with a caption for the Los Angeles County Superior Court. This motion is untimely and not properly filed in this court. On August 30, we received a three-page document which (1) claims to provide additional facts about the contentions in the first two briefs; (2) argues in passing that the probable cause for the search warrant in the underlying case was falsified; and (3) requests a certificate of probable cause. This document is untimely, seeks consideration of matters outside the record on appeal, and is not supported by legal authority or argument. In addition, the request for certificate of probable cause is filed in the wrong court. We do not consider the contentions in this document.

² Further undesignated statutory references are to the Penal Code.

custody (on the condition that he plead guilty to one count) and accepted the trial court's offer of five years of formal probation (on the condition he plead guilty to all counts). Before taking defendant's plea, the prosecutor stated his understanding that defendant would be pleading guilty to counts 1 through 6 of the complaint, and listed each count. Defendant stated he understood the charges against him. After defendant was advised of and waived his rights, the prosecutor read the charge for each count individually and defendant entered a separate no contest plea for each count.³ Defense counsel stipulated there was a factual basis for the pleas. The court then sentenced defendant to a total term of five years eight months in state prison, suspended the sentence and placed defendant on five years of formal probation.

On January 7, 2016, defendant's probation was summarily revoked after he was arrested and charged in a new criminal case, case No. TA139004. Defendant was alleged to have pointed a firearm at two men in another car while he was driving a stolen car.

On January 5, 2017, the trial court held a probation revocation hearing and found defendant had violated his probation by his conduct in case No. TA139004, by possessing a firearm and pointing it at two individuals in another car.

At defendant's request, we take judicial notice of the relevant minute orders in case No. TA139004, which show that on May 4, 2017, following a seven-day jury trial, defendant was convicted of all six charges in that case.

³ Defendant was advised by the court that a no contest plea would be treated the same as a guilty plea.

DISCUSSION

1. *Initial Plea*

Although defendant contends he did not commit the original underlying crimes but rather was framed for them, he pled no contest to all six charges. A guilty or no contest plea “concedes that the prosecution possesses legally admissible evidence sufficient to prove defendant’s guilt beyond a reasonable doubt. Accordingly, a plea of guilty waives any right to raise questions regarding the evidence, including its sufficiency or admissibility.” (*People v. Gonzalez* (1993) 13 Cal.App.4th 707, 713; see § 1016, subd. 3 [no contest plea has same legal effect as guilty plea].)

Defendant contends his plea is not valid because he was not aware he was pleading no contest to all six counts in the complaint. He did not seek or obtain a certificate of probable cause. Accordingly, he may not challenge the validity of his plea on this appeal. (§ 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1098-1099.).

2. *Probation Revocation Hearing*

Defendant contends there is insufficient evidence to show that he possessed a loaded firearm or that he pointed it at the victims in this case. He also makes various allegations of misconduct by the law enforcement officers involved in the case, including claiming they fabricated evidence.

Proof of a probation violation need only be shown by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 446-447.) “Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense. [Citation.]” (*People v. Vanella* (1968) 265 Cal.App.2d 463, 469.)⁴

⁴ Here, the probation revocation hearing was brief, and the People offered evidence related to defendant’s possession and exhibition of a firearm.

“We review a probation revocation decision pursuant to the substantial evidence standard of review (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681), and great deference is accorded the trial court's decision.” (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) “Under that standard, our review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.)

At the probation revocation hearing, the prosecutor introduced a brief cell phone video showing someone in a white Infiniti pointing a gun at the person taking the video. The driver of the Infiniti abandoned it. Defendant was arrested in a containment area set up around the abandoned car. Sergeant Dan McElderry interviewed defendant after his arrest. The prosecutor played the audio tape of the interview. In this interview, defendant admitted pointing a gun at a man in another car, but denied the gun was loaded. A loaded gun was recovered from the abandoned Infiniti.

This is substantial evidence of solid value to support the trial court’s finding that defendant violated his probation by possessing a firearm and pointing it at two individuals in another car.

Even if defendant had introduced evidence which contradicted Sergeant McElderry’s account of events, such evidence would not require reversal of the trial court’s finding. (See *People v. Kurey*, *supra*, 88 Cal.App.4th at pp. 848-849.) We note, however, that while defense counsel

The evidence at the hearing might not have been sufficient to support a conviction for those offenses. Later, however, defendant received a seven-day jury trial and was convicted of those and additional offenses.

vigorously cross-examined the prosecution's only witness, defendant did not present any witnesses or offer any evidence at the hearing. Thus, there is no evidence in the record contradicting Sergeant McElderry or supporting defendant's claim he was framed.

3. Independent Review of the Record

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.)

DISPOSITION

The trial court's order revoking probation is affirmed.