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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.

PHIL NGUYEN,

Defendant and Appellant.

B281896

(Los Angeles County
Super. Ct. No. VA130771)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Olivia Rosales Judge. Affirmed.

Maggie Shrout, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

An information, filed on November 14, 2013, charged defendant and appellant Phil Nguyen with second degree burglary (Pen. Code, § 459, count one); identity theft (Pen. Code, § 530.5, subd. (a), count two); forgery of a driver's license (Pen. Code, § 470, subd. (a), count 3); and further alleged that defendant had eight prison priors convictions pursuant to Penal Code section 667.5. The counts were based on defendant's unauthorized use of another person's credit card and identification to purchase an iPhone at an Apple Store.

On March 14, 2014, defendant pleaded no contest to the charge of identity theft. As part of the plea agreement, the parties agreed that if defendant appeared at the sentencing hearing, the court would sentence him to three years in state prison and strike the prior conviction allegations, but if defendant failed to appear for sentencing, the court would sentence him to four years in state prison. After that, at defendant's request, his sentencing hearing was postponed several times; defendant claimed that he could not appear because he was in Pennsylvania dealing with his wife's illness.

On July 24, 2014, defendant again failed to appear for sentencing because he was incarcerated in Pennsylvania serving a sentence in federal prison; the trial court did not impose a sentence on that date. In 2015 and 2016, while defendant was in prison in Pennsylvania, the court denied defendant's requests that it sentence him in absentia in this matter.

After defendant completed his sentence in federal prison, he was extradited to Los Angeles for sentencing in this case. On April 5, 2017, at the sentencing hearing, defendant requested that the court impose the sentence to run concurrent to the time he had served on the federal conviction. The court refused the request, observing that while the imposition of sentence was postponed in this case and while defendant was in Pennsylvania

purportedly caring for his wife, defendant had continued to engage in identity theft crimes there, which resulted in his federal prison sentence. The court sentenced defendant to four years in prison. Defendant filed a timely notice of appeal on April 5, 2017.

We appointed counsel to represent defendant in this appeal. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On September 26, 2017, we directed appointed counsel to immediately send the record on appeal and a copy of the opening brief to defendant. We notified defendant that within 30 days from the date of the notice he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We received no response.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with her responsibilities and, as we discuss below, that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

No appeal lies to challenge the validity of a guilty plea unless a defendant has complied with Penal Code section 1237.5 by obtaining a certificate of probable cause from the trial court. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1088.) A defendant may, however, obtain review on appeal of so-called "noncertificate" issues¹ if the notice of appeal states such grounds. (*Ibid.*) Here, defendant does not challenge the validity of his plea. Instead, his notice of appeal indicates that his appeal

¹ Noncertificate issues are "[g]rounds that arose after entry of the plea and do not affect the plea's validity" or "[t]he denial of a motion to suppress evidence under Penal Code section 1538.5." (Cal. Rules of Court, rule 8.304(b)(4).)

is based on the sentence or other matters after the plea that do not affect the validity of the plea. He did not, however, identify any noncertificate grounds in his notice of appeal nor submit a brief or letter advancing any such grounds.

Our review has not identified any noncertificate issue warranting appellate review. Defendant did not seek appellate review of the orders denying his requests to impose the sentence in this case in absentia, and thus he forfeits any claimed error concerning those orders. (See *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113 [Unless an appeal is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of claims on appeal.].) In addition, the record from the sentencing hearing reveals that the court fully considered the parties' arguments as well as the mitigating and aggravating evidence. It does not appear that court erred when it imposed the sentence in this case. Accordingly, judgment is affirmed.

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur.

CHANEY, J.

JOHNSON, J.