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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. TIMOTHY ALLEN ZIEGLER, Defendant and Appellant.	B275686 (Los Angeles County Super. Ct. No. SA091184)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elden S. Fox, Judge. Affirmed.

Meredith J. Watts, under appointment by the Court of Appeal, and Timothy Allen Ziegler, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Timothy Allen Ziegler pled no contest to one count of criminal threats (Pen. Code, § 422, subd. (a)).[1] He noticed an appeal from his sentence or other matters not affecting the validity of his plea. His counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Having independently reviewed the record, we affirm the judgment

By information, appellant was charged with one count of criminal threats against Michael Abrams. The evidence at the preliminary hearing showed that Abrams was a family law attorney who represented appellant's wife in divorce and related proceedings against appellant. Abrams had obtained several domestic violence restraining orders against defendant on the wife's behalf. In the family law proceedings, appellant represented himself, and thus Abrams was in contact with him. According to Abrams, appellant had once charged at him in the court hallway when served with a restraining order. In a phone call on July 13, 2015, appellant told Abrams that when he gets angry, someone gets hurt. In a call to Abrams the next day, July 14, 2015, appellant yelled that someone was going to get hurt and that he was losing it. When Abrams replied that the words sounded like a threat, appellant said something to the effect, "Motherfucker, that is a threat." On July 29, 2015, appellant sent an e-mail to Abrams' office in which he talked about killing people who stood in his way and mentioned Abrams. In an e-mail to Abrams' office on July 31, 2015,

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[1] All further section references, unless otherwise specified, are to the Penal Code.

appellant wrote that Abrams was the source of all his problems and that he was going to send Abrams to hell. Given all that had transpired, Abrams interpreted appellant's statement in the July 31 e-mail as a threat to kill him and was in fear for his life.

Following the preliminary hearing, on October 5, 2015, appellant (who was then in custody) made a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118) concerning the Deputy Alternate Public Defender representing him, who was standing in for a colleague. The motion was denied, but the Office of the Alternate Public Defender later declared a conflict and a Bar Panel attorney was appointed. That attorney also later declared a conflict and a different Bar Panel Attorney was appointed. Sometime before December 11, 2015, appellant was released on bail. On December 11, 2015, appellant made a *Marsden* motion concerning his latest attorney, which was denied. On January 11, 2016, appellant made another *Marsden* motion. The court denied the motion, but declared a doubt as to appellant's competency to stand trial under section 1368 and appointed two experts to examine appellant. On February 16, 2016, the parties submitted the issue of competency on one report, which declared appellant competent. After the court found appellant competent, appellant asked to represent himself and filled out a waiver–of–counsel form. However, when the court inquired to ensure that appellant understood the consequences of representing himself, appellant complained about the conduct of his present and prior attorneys. Because appellant was not making an unequivocal request to represent himself, the court conducted another *Marsden* hearing. Following that hearing, the Bar Panel attorney representing appellant

declared a conflict, and was replaced by yet another Bar Panel attorney. The court denied appellant's request to represent himself "without prejudice."

On February 29, 2016, appellant appeared in court in custody, having surrendered himself on his bond. He complained that his crime should be a misdemeanor because he never acted on his threat. He complained that Abrams was "getting immunity," had "taken [his] kids away," and had committed "fraud and forgery" against him in the family law proceedings by forging appellant's name to a document and understating his wife's income. The court explained that appellant's case was a separate prosecution, not a case in which appellant could sue Abrams. Appellant complained, "I've been to family law. I've been to this court. I've tried to file with the District Attorney's Office. Nobody will file on Michael Abrams. So that means I'm getting an injustice in the court system." Appellant asked "for a [Code of Civil Procedure section] 170.6 motion" on the ground that the court was biased. He asked family members who were present to "stand up and speak out." The court directed appellant to sit down. Appellant replied, "No. They can speak up." The court again ordered appellant to be seated. Appellant replied, "They're not in contempt of court. They are speaking out. They know that I'm being treated unjustly in this court."

The court denied appellant's Code of Civil Procedure section 170.6 challenge. Appellant then asked to represent himself. The court denied the motion on the ground that appellant could not control his behavior and comply with court rules. Appellant continued to interrupt the court and incited his family to speak as well. The court observed, "The

defendant is disrupting the court, calling upon his family to stand up and speak. His family has stood up and spoken. It's clearly disruptive behavior. I will not grant a *Faretta* motion. The defendant continues to speak as I speak."

Ultimately, on April 27, 2016, appellant appeared for trial with his current Bar Panel attorney as counsel of record. Retained counsel also was present. During jury selection, the court agreed to substitute appellant's retained counsel as counsel of record solely for the purpose of entering a disposition. Appellant then agreed to plead no contest to the criminal threats charge as a felony in exchange for the court's promise (over the prosecutor's objection) to grant probation for five years subject to various terms and conditions, including that appellant complete a 52-week anger management course, that he receive credit for time served (180 days), and that he perform 30 days of community labor. The court also stated that appellant would receive a verified work permit to travel outside of Los Angeles County for work, and that the court would likely reduce the offense to a misdemeanor if he successfully completed probation. Appellant affirmed that he understood the terms of the disposition. He was then advised of the consequences of his plea, affirmed he understood them, waived his rights, and pled no contest. The court placed him on probation as promised.

On May 26, represented by retained counsel, appellant filed a motion to withdraw his plea on the ground that he had taken a Xanex pill before the plea to relieve his anxiety. On June 10, 2016, the court denied the motion. In open court, appellant then complained (as he had

in the past) that Abrams had committed forgery and stolen money from him in the divorce. He also complained about the failure of the District Attorney to prosecute Abrams. The court explained that appellant had accepted the disposition and was now simply expressing buyer's remorse.

On May 31, 2016 appellant filed a notice of appeal and request for a certificate of probable cause. The court denied the request on June 1, 2016, and the notice of appeal was deemed inoperative.

On June 14, 2016, appellant filed a notice of appeal based on the sentence or other matters not affecting the validity of the plea.

As noted, appellant's counsel on appeal filed a *Wende* brief. Following notification of his right to file a supplemental brief, appellant filed a supplemental brief making several contentions, none of which is cognizable in this appeal.

Appellant contends that the trial court erred in denying him a certificate of probable cause. However, the denial of a certificate of probable cause must be challenged by a petition for a writ of mandate. (*In re Brown* (1973) 9 Cal.3d 679, 683.) Appellant failed to file such a petition.

Appellant complains that the court erred in denying his motion to withdraw his guilty plea. The issue is not properly before us. "A defendant must obtain a certificate of probable cause in order to appeal from the denial of a motion to withdraw a guilty plea, even though such a motion involves a proceeding that occurs after the guilty plea." (*People v. Johnson* (2009) 47 Cal.4th 668, 679.)

Appellant contends that the court erred in denying his *Marsden* motions, that his bail was excessive, that he should not have been required to plead to a felony, and that the court erred in denying his section 995 motion to dismiss the information. However, because appellant did not obtain a certificate of probable cause, this appeal is limited to issues that do not challenge the validity of his guilty plea; the only cognizable issues are those that "'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.' [Citation.]" (*People v. Johnson, supra,* 47 Cal.4th at p. 677.) None of these issues fall within the limited scope of this appeal.

Appellant complains that the District Attorney's Office did not prosecute Abrams for forgery, that he has evidence of the forgery, and that Abrams attempted to bribe him to drop his allegations of forgery. These complaints do not amount to any contentions that can be raised in this appeal.

Having independently reviewed the record, we conclude that no arguable issue exists.

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DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.