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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.

DERRELL WOOLBRIGHT,

Defendant and Appellant.

B241876

(Los Angeles County
Super. Ct. No. NA087810)

THE COURT:*

Defendant Derrell Woolbright appeals from the judgment entered following his open plea to the court of “no contest” to the following charges: sexual battery by restraint (Pen. Code, § 243.4, subd. (a))¹; sexual penetration by a foreign object (§ 289, subd. (a)(1)); violation of a protective order (§ 273.6, subd. (a)); kidnapping (§ 207, subd. (a)); and two counts of false imprisonment by violence (§ 236). Defendant admitted having suffered three prior convictions for serious or violent felonies (§§ 667, subds. (b) – (i), 1170.12, subds. (a) – (d)). Defendant admitted having served three prior prison terms (§ 667.5, subd. (b)). He also admitted an allegation that he had suffered two prior convictions within the meaning of section 667, subdivision (a)(1).

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

¹ All further references to statutes are to the Penal Code unless stated otherwise.

Pursuant to an agreement whereby the trial court would sentence defendant to 13, 14, or 15 years, the court imposed a total sentence of 14 years. In count 1, sexual battery by restraint, the trial court imposed the low term of two years. The trial court struck two of defendant's three strikes and doubled that term to four years under the three strikes law. The trial court imposed five years each on defendant's prior convictions under section 667, subdivision (a) and struck the one-year enhancements for prior prison terms (§ 667.5, subd. (b)). The trial court imposed concurrent midterms in all remaining counts.

Because defendant entered a plea before trial, the facts are summarized from the transcript of his preliminary hearing. On July 25, 2010, Rhonda B. had dated defendant for approximately one year but had broken up with him by telephone two weeks before. That day, defendant asked Rhonda to "come over," and she said "no." Defendant then arrived at Rhonda's and asked to come in, and she again said, "no." When defendant pushed his foot through the door, Rhonda let him enter. He asked her to go into the bedroom to talk, and both Rhonda and her daughter told him, "no." Defendant insisted, and Rhonda relented. Once they were inside, defendant locked the door, and Rhonda told him he had to leave. Defendant refused and Rhonda began yelling. Defendant put his hands on her mouth. They started arguing, and Rhonda's daughter began knocking on the door. Rhonda began screaming. Defendant pushed Rhonda on the bed, opened her robe, and bit her breast. Rhonda tried to push defendant off, and defendant put his hand between her legs and inserted his fingers in her vagina. Rhonda told her daughter to call the police.

On August 10, 2010, Rhonda obtained a restraining order against defendant. Two hours later, defendant was in a car in front of Rhonda's house. Defendant drove away and telephoned Rhonda as he did so. He was laughing. He told her he was not going to stay away from her, and he was not going to leave her alone. Rhonda was afraid and went to the police station. Rhonda had previously obtained a restraining order against defendant for kidnapping her. He had abided by the order until Rhonda canceled it.

After protracted pretrial proceedings lasting approximately six months, and after lengthy negotiations and sustained effort by the parties and the trial court, a deal was offered to defendant. He would be required to enter into an open plea to the court and, at a sentencing hearing, the trial court would impose a sentence of 13, 14, or 15 years after listening to evidence and argument by the parties. Defendant, who had several strikes, would thus avoid an indeterminate sentence that could potentially be more than 175 years to life.² Defendant rejected the offer, and pretrial proceedings continued. On the day jury selection was to commence, defendant indicated that he wanted to engage in a plea bargain. The trial court told defendant that if there was a plea bargain, he would not be able to appeal, and the trial court repeated that it would consider imposing either 13, 14, or 15 years on an open plea to all charges. When asked if he had any questions, defendant stated he did not. He understood that he would be waiving all custody credits.

The trial court advised defendant of his constitutional rights, and defendant said he understood each of his rights and gave up each of them. He said he was pleading freely and voluntarily because it was in his best interest to do so. The trial court informed the defendant of the consequences of his plea, including the registration requirement and the fact that there were no appeal rights, to which defendant agreed. Defendant then pleaded “no contest” to all the charges and admitted the allegations. At the sentencing hearing, the trial court summarized the plea agreement and noted that defendant had indicated that he gave up all appeal rights in regard to any improper sentence. The trial court noted that there had been “a lot of compromises on both sides.” After hearing argument and allowing defendant to speak, the trial court imposed an aggregate sentence of 14 years. Defendant filed a timely notice of appeal in which he indicated that the appeal was based

² Although defendant’s plea was characterized as an open plea, like the plea in *People v. Cuevas* (2008) 44 Cal.4th 374, it was not truly so. “An open plea is one under which the defendant is not offered any promises. [Citation.] In other words, the defendant ‘plead[s] unconditionally, admitting all charges and exposing himself to the maximum possible sentence if the court later chose to impose it.’ [Citation.]” (*Id.* at p. 381, fn. 4.)

on the sentence or other matters occurring after the plea, on the denial of a motion to suppress evidence, and on a challenge to the validity of the plea. He requested a certificate of probable cause, alleging that the “no contest” plea was illegal because of prosecutorial misconduct, ineffective assistance of counsel, and judicial misconduct. The trial court denied his request.

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that they had been unable to find any arguable issues. On October 4, 2012, we advised defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider.

On November 6, 2012, defendant filed a supplemental letter brief in which he contends that his plea was taken under duress because of problems he was having with his attorney. He states he was badgered to take a deal. Defendant further contends that his trial counsel was ineffective.³ In addition, defendant argues that the prosecutor committed misconduct by inaccurately stating the facts of the case and evidence. Finally, defendant states that the judge was biased against defendant because of his prior convictions.

³ Defendant also asks for a new appellate attorney, since his current attorney did not communicate with him. He asks this court for effective representation, or for him to receive a certificate of probable cause so that he can take this deal back and receive proper representation. Defendant’s request for new appellate counsel is denied. Requests for a certificate of probable cause must be filed in superior court. Defendant’s request has already been denied.

Under section 1237.5,⁴ “[a] defendant may not appeal ‘from a judgment of conviction upon a plea of guilty or nolo contendere,’ unless he has obtained a certificate of probable cause. [Citations.] Exempt from this certificate requirement are postplea claims, including sentencing issues, that do not challenge the validity of the plea. [Citations.]” (*People v. Cuevas, supra*, 44 Cal.4th at p. 379; *People v. Mendez* (1999) 19 Cal.4th 1084, 1095-1096; see Cal. Rules of Court, rule 8.304(b).) A defendant may appeal without obtaining a certificate of probable cause only if he does so on noncertificate grounds that “go to postplea matters not challenging his plea’s validity and/or matters involving a search or seizure whose lawfulness was contested pursuant to section 1538.5. [Citations.]” (*People v. Mendez, supra*, 19 Cal. 4th at p. 1096.) Defendant has not identified any issue that is exempt from the requirement of a certificate of probable cause following a “no contest” plea—all of his arguments attack the validity of his plea.⁵

Although defendant did not agree to a specific number of years, he agreed to the narrowest of ranges in sentencing, i.e., 13, 14, or 15 years depending on any mitigating or aggravating evidence or persuasive argument offered at the sentencing hearing. The trial court chose the middle number. Arguably, if defendant had attacked only the trial court’s exercise of discretion in choosing the term of 14 years in lieu of 13 years, he would have required no certificate. (*People v. Buttram* (2003) 30 Cal.4th 773, 787 [if defendant does not expressly waive the right to appeal, no certificate is required when plea bargain contemplates a separate adversarial sentencing proceeding in which the appropriate

⁴ Section 1237.5 provides as follows: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

⁵ No motion to suppress evidence under section 1538.5 is contained in the record.

sentencing choice within the agreed-upon maximum term is left to the trial court's discretion].) Defendant, however, makes no reference to the trial court's sentencing choice. In addition, although the record is not perfectly clear as to whether defendant waived his right to appeal the trial court's discretionary sentencing decision, it does appear that he did so. It is certainly clear that he knowingly, intelligently, and voluntarily waived his right to appeal any illegality in his sentence. "Just as a defendant may affirmatively waive constitutional rights to a jury trial, to confront and cross-examine witnesses, to the privilege against self-incrimination, and to counsel as a consequence of a negotiated plea agreement, so also may a defendant waive the right to appeal as part of the agreement. [Citations.]" (*People v. Panizzon* (1996) 13 Cal. 4th 68, 80.)

Accordingly, in the absence of a certificate of probable cause, the appeal is "nonoperative" as to defendant's claims and must be dismissed. (*People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) The certificate requirements of section 1237.5 "should be applied in a strict manner." (*People v. Mendez, supra*, 19 Cal.4th at p. 1098.)

We have examined the entire record, and we are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The appeal is dismissed.

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