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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER V. WRIGHT,

Defendant and Appellant.

B269762

Los Angeles County
Super. Ct. No. BA432281

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Perry, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After entering a plea of no contest, defendant Walter V. Wright appeals from his convictions for residential burglary, criminal threats, and felony vandalism. Although he claims the court erred when it failed to conduct a competency hearing before accepting his plea and sentencing him, defendant acknowledges he is precluded from directly challenging the validity of his plea on appeal because he did not obtain a certificate of probable cause from the trial court. Nevertheless, he argues we should reach the merits of his challenge to determine whether his trial counsel rendered ineffective assistance by failing to obtain a certificate of probable cause. Because we conclude defendant cannot establish he was prejudiced by counsel's omission, we reject his claim of ineffective assistance of counsel and affirm his convictions.

PROCEDURAL BACKGROUND¹

1. Trial Court Proceedings

On February 25, 2015, the People filed an information charging defendant with first degree residential burglary (Pen. Code,² § 459), criminal threats (§ 422, subd. (a)), and two counts of felony vandalism (§ 594, subd. (a)), and alleging several enhancement allegations based on a 2011 conviction for criminal threats. Defendant pled not guilty to all charges and denied the enhancement allegations.

¹ We do not discuss the facts of the underlying offenses because they are not relevant to any of the issues raised in this appeal.

² All undesignated statutory references are to the Penal Code.

On July 29, 2015, at a pretrial conference, defense counsel requested a continuance and asked the court to appoint a psychiatrist to evaluate defendant. Defense counsel declared a doubt over defendant's competency, explaining he was "having grave, grave difficulty in getting [defendant] to understand the nature of the proceedings, understand what's going on here" Counsel told the court he had contacted defendant's mother, who confirmed that defendant had a history of mental health issues.

The court addressed defendant directly, asking him if he "kn[e]w what[] [was] going on here today." Defendant said "I really don't know what's going on" and "I thought I was here to go home." The court then asked if defendant knew who the judge was, to which defendant replied in the negative and said he thought his "mother decide[d] who will send [him] home." Defendant told the court he thought he had been placed in a "mental facility," that he and "other mental patients" had just come from the "mental facility," and that he thought the people who would sit in the jury box were "coming to see their family."

The court concluded defendant was competent to stand trial, explaining: "[Defendant is] talking to me, he's looking at me. He's not disheveled. He's well dressed. He has not raised his voice. The tone of his voice is normal, not very high or very low. He's cooperative with the bailiffs. He's never had any incidents in this court, or had any incidences with the bailiffs, is my understanding." The court denied defense counsel's request "to refer the matter under [section] 1368."

On July 31, 2015, at a readiness hearing, defense counsel again asked the court to appoint a psychiatrist to evaluate defendant. In support of that request, counsel provided the court with a copy of a report prepared by Dr. Jack Rothberg after conducting a psychiatric evaluation of defendant in late January

2015. Although counsel claimed Dr. Rothberg had concluded defendant was incompetent to stand trial, the court read the report and noted that Dr. Rothberg had actually concluded defendant was competent. The court read the following excerpt from the report: “[Defendant] is certainly able to discuss the facts of the case and provide information that will be helpful in his defense. I do believe he is able to cooperate with his counsel and on that basis he is competent to stand trial. I do believe he has underlying significant mental health issues of a psychotic nature.”³

During the middle of the hearing, defendant became angry and acted out in court, causing a “major disturbance” and requiring the response of “numerous back[-]up sheriff’s department personnel.” After defendant was removed from the courtroom, counsel asked to be relieved as defendant’s counsel, stating he could not effectively communicate with his client. The court denied counsel’s motion because “it doesn’t appear that [counsel had] a breakdown in relationship with [his] client.” The court also declined to declare a doubt about defendant’s mental competence, explaining: “As to incompetence, it appears that this is defendant’s own conduct that’s intentional conduct in disrupting the court’s proceedings. His demeanor or irrational behavior or prior—or preexisting psychiatric conditions [have] little bearing on the question of whether or not the defendant can assist defense counsel. [¶] Substantial evidence of incompetency would be sufficient, if there is a statement from a doctor after the examination and the defense states it is the doctor’s opinion the defendant is incompetent. [¶] Dr. Rothberg’s . . . report states

³ We have read Dr. Rothberg’s report, which was filed under seal, and confirm that he concluded defendant was competent to stand trial.

that although [defendant] has some psychiatric issues, he appears to be competent. So the court will deny the request to proceed under [section] 1368 proceedings.”

On August 6, 2015, the matter was called for jury trial. Defense counsel moved to continue trial arguing that “defendant ha[d] seriously deteriorated within the last couple of weeks here, and there is absolutely no communication between myself and the defendant . . .” The court denied the motion and transferred defendant’s case to a new courtroom for trial.

After the matter was transferred to the new courtroom, the court and counsel discussed a possible plea deal. When the court announced that the People’s final offer was “13 years,” defendant “started violently slamming the side of his head against counsel table . . . and then he stood and attempted to turn the table over . . . while he was handcuffed.” The bailiffs wrestled defendant to the ground as “he continued to fight.” “He was yelling nonsensical statements about persons and things” and “was finally wrestled into a restraint chair that requires securing a person’s shoulder area, arms and feet” while he continued to kick the bailiffs.

On August 7, 2015, before jurors were ordered to the courtroom, defense counsel renewed his request for the appointment of a psychiatrist to evaluate defendant. The court noted that defendant had “done a year of . . . confinement in a psychiatric hospital” and that defendant “does have some type of mental illness,” but concluded he was competent to stand trial.

Defendant then indicated he was interested in entering an open plea to the court. After defendant had an opportunity to discuss the matter with his counsel, the court advised defendant of his rights and the consequences of his plea. Defendant withdrew his plea of not guilty and entered a no contest plea to all of the charges and admitted the 2011 prior conviction. After

defendant waived time for sentencing, he was referred for a 90-day diagnostic evaluation under section 1203.03.

On November 19, 2015, the court conducted a sentencing hearing. Before his sentence was pronounced, defendant addressed the court at length. Defendant discussed his personal background and why he believed he had committed his past and current crimes. He expressed remorse for his actions inside and outside the courtroom and asked the court for leniency in sentencing him. Once the court stated that it intended to sentence defendant to 13 years in prison, however, defendant became angry, repeatedly shouting “Fuck you” to the judge and “flip[ping] the court table.” As the court tried to pronounce defendant’s sentence, defendant alternated between asking the court why it refused to show him leniency and claiming that he was hearing voices in his head, once shouting, “I’m hearing fucking voices. You can’t do shit when I’m hearing voices. I can’t hear when I’m hearing voices.” After the court found defendant had “voluntarily absented himself” from the proceedings, the court sentenced defendant to 13 years in state prison.

After pronouncing defendant’s sentence, the court stated, “I’m very troubled by his actions. I want to say I’m especially troubled by the fact that he seemed so controlled and rational until it appeared that he was going to be going to prison, and then he evidenced that temper that he has evidenced before that has gotten him in trouble before.” The court noted that defendant “is a very disturbed young man and he needs psychiatric counseling.” The court recommended that defendant “seek mental health care while in state prison.”

2. Defendant's Appeal

Defense counsel filed a timely notice of appeal on January 19, 2016, checking the box on the form stating, "This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea." But counsel did not check the box stating that defendant's appeal was based on a challenge to the validity of the plea, nor did counsel separately request a certificate of probable cause from the trial court. Attached to the form notice of appeal is a handwritten "notice of appeal" drafted by defendant. Defendant's handwritten document states that he is making a " 'Notice of Appeal,' " but it does not request a certificate of probable cause or otherwise indicate that defendant's appeal is based on a challenge to the validity of his plea.

On October 12, 2016, defendant's appellate counsel filed an Application for Permission to Seek a Belated Certificate of Probable Cause in Los Angeles County Superior Court. We denied the application on November 10, 2016.

On December 28, 2016, appellate counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, asking this Court to conduct an independent review of the record on appeal. Counsel indicated there was a potential issue concerning whether the trial court erred by refusing to conduct a competency hearing under section 1368, but counsel believed the issue could not be raised on appeal because defendant did not obtain a certificate of probable cause.

On February 28, 2017, we issued an order directing the parties to provide supplemental briefing on two issues: (1) whether defendant's trial counsel rendered ineffective assistance when he failed to obtain a certificate of probable cause; and (2)

whether “the requirement to obtain a certificate of probable cause within 60 days trump[s] a defendant’s Sixth Amendment right to effective assistance of counsel.” Defendant and the People each filed supplemental briefs addressing these issues.⁴

DISCUSSION

Before challenging the validity of a guilty or no contest plea, a criminal defendant must obtain from the trial court a certificate of probable cause under section 1237.5. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1099 (*Mendez*).) If the defendant fails to do so, his or her appeal is limited to challenging issues that arose after the plea was entered, such as certain sentencing issues that were not part of the negotiated plea. (See *ibid.* [a defendant seeking to appeal after a plea of guilty or no contest must comply with the requirements of section 1237.5 “fully, and, specifically, in a timely fashion”]; see also *People v. Lloyd* (1998) 17 Cal.4th 658, 665.) The certificate of probable cause requirement is strictly enforced. (*Mendez*, at pp. 1098–1099.)

Here, defendant never obtained a certificate of probable cause. As a result, he is precluded from directly challenging his plea on the ground that he was not competent to stand trial. (See *Mendez, supra*, 19 Cal.4th at pp. 1099–1104.) Nevertheless, defendant may have been denied effective assistance of counsel based on his trial counsel’s failure to obtain a certificate of

⁴ Defendant also filed a petition for habeas corpus, arguing his counsel was ineffective for failing to declare a doubt about defendant’s mental competency before defendant entered his no contest plea and for failing to timely obtain a certificate of probable cause. We ordered defendant’s writ petition to be considered at the same time as this appeal. We have denied the petition in a separate order.

probable cause. (See *Roe v. Flores-Ortega* (2000) 528 U.S. 470, 476 [a defendant may pursue a claim for ineffective assistance of counsel based on counsel's failure to file a notice of appeal]; see also *People v. Ivester* (1991) 235 Cal.App.3d 328, 338 [reaching defendant's claim that trial counsel rendered ineffective assistance by failing to obtain a certificate of probable cause to preserve the defendant's challenge to the validity of his plea].) As we explain, however, even if we were to assume trial counsel's performance was deficient, defendant cannot show he suffered any prejudice. (See *Ivester*, at p. 338 [a review of the merits of the defendant's claims on appeal was necessary to determine whether the defendant was prejudiced by counsel's failure to obtain a certificate of probable cause].)

Under the due process clause of the Fourteenth Amendment to the United States Constitution and state law, the government is prohibited from trying or sentencing a criminal defendant while he is mentally incompetent. (*People v. Mai* (2013) 57 Cal.4th 986, 1032 (*Mai*); § 1367, subd. (a).) A defendant is incompetent to stand trial if he lacks a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, as well as a rational and factual understanding of the proceedings against him. (*People v. Rogers* (2006) 39 Cal.4th 826, 846–847 (*Rogers*).)

The court must “suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial.” (*Rogers, supra*, 39 Cal.4th at p. 847; see also § 1368.) “The court's duty to conduct a competency hearing may arise at any time prior to judgment. [Citations.]”

(*Rogers*, at p. 847.) “Evidence is ‘substantial’ if it raises a reasonable doubt about the defendant’s competence to stand trial.” (*People v. Jones* (1991) 53 Cal.3d 1115, 1152.)

“Substantial evidence of incompetence exists when a qualified mental health expert who has examined the defendant states under oath, and “ ‘ ‘ ‘with particularity,’ ” ’ ” a professional opinion that because of mental illness, the defendant is incapable of understanding the purpose or nature of the criminal proceedings against him, or of cooperating with counsel.” (*Mai*, *supra*, 57 Cal.4th at pp. 1032–1033.) Under proper circumstances, the defendant’s demeanor may also constitute substantial evidence of incompetence. (*Id.* at p. 1033.) But “disruptive conduct and courtroom outbursts by the defendant do not necessarily demonstrate a present inability to understand the proceedings or assist in the defense.” (*Ibid.*) In addition, while counsel’s statement that he or she believes a client is incompetent is entitled to some weight, counsel’s assertion to that effect, in the absence of substantial evidence, does not require the court to conduct a competency hearing. (*Ibid.*)

“A trial court’s decision whether or not to hold a competence hearing is entitled to deference, because the court has the opportunity to observe the defendant during trial. [Citations.] The failure to declare a doubt and conduct a hearing when there is substantial evidence of incompetence, however, requires reversal of the judgment of conviction.” (*Rogers*, *supra*, 39 Cal.4th at p. 847.)

If there is less than substantial evidence to cast doubt on the defendant’s competence to stand trial, however, “[i]t is within the discretion of the trial judge whether to order a competence hearing. When the trial court’s declaration of a doubt is

discretionary, it is clear that ‘more is required to raise a doubt than mere bizarre actions [citation] or bizarre statements [citation] or statements of defense counsel that defendant is incapable of cooperating in his defense [citation] or psychiatric testimony that defendant is immature, dangerous, psychopathic, or homicidal or such diagnosis with little reference to defendant’s ability to assist in his own defense [citation].’ [Citation.]” (*People v. Welch* (1999) 20 Cal.4th 701, 742.)

Here, there was insufficient evidence that defendant was incompetent before he entered his plea. As noted above, at a July 2015 pretrial hearing, defense counsel provided the court with Dr. Rothberg’s report, which the doctor wrote shortly after evaluating defendant in late January 2015. The report concluded that although defendant suffered from some psychiatric issues, he was competent to stand trial because he could understand the nature of the proceedings against him and assist his defense counsel. Defendant did not present any medical, psychiatric, or psychological evaluations that concluded he was incompetent to stand trial or that contradicted the conclusions in Dr. Rothberg’s report. (See *Mai, supra*, 57 Cal.4th at pp. 1032–1033.)

Defense counsel’s statements that he believed defendant was incompetent to stand trial and defendant’s behavior in court also did not constitute substantial evidence of defendant’s incompetence. Although defendant told the court on at least two occasions that he did not understand what was going on, the court was able to observe defendant’s behavior and demeanor throughout those hearings. Based on its observations, as well as the contents of Dr. Rothberg’s report, the court concluded that defendant was intentionally acting out to avoid having to serve time in prison.

The court's conclusion is amply supported by the record. For example, during the plea hearing, defendant was coherent and acknowledged he had problems with his temper and has "been catching cases" because of that temper. And during the sentencing hearing, defendant was responsive to the court's questions and statements, he was articulate in explaining his past behavior out of court and in expressing remorse for his behavior in court, and he demonstrated an understanding of what was occurring during that hearing. All of this occurred when defendant believed he could convince the court to show leniency in imposing his sentence. It was not until the court told defendant that it would not consider imposing less than a 13-year sentence that defendant started to act out, cursing at the judge and claiming he could not hear what the judge was saying.

In short, the record supports the court's conclusion that defendant was able to understand the nature of the proceedings against him and assist his counsel in a rational manner. Because there was insufficient evidence of defendant's incompetence to require the court to conduct a competency hearing, defendant cannot show he was prejudiced by trial counsel's failure to obtain a certificate of probable cause.⁵

⁵ Because we conclude defendant would not prevail on his underlying challenge to his no contest plea, we need not address the constitutionality of the requirement that he obtain a certificate of probable cause before challenging the validity of his plea.

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.