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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.

ROBERTO SANCHEZ,

Defendant and Appellant.

B287003

(Los Angeles County
Super. Ct. No. BA457932)

THE COURT:*

Roberto Sanchez appeals the judgment entered on September 22, 2017, following a guilty plea which resulted in a conviction for assault with force likely to cause great bodily injury. (Pen. Code,¹ § 245, subd. (a)(4).) Defendant filed his

* LUI, P.J., ASHMANN-GERST, J., HOFFSTADT, J.

¹ Undesignated statutory references are to the Penal Code.

notice of appeal on November 28, 2017, and we appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

Our review of the record reveals that we lack jurisdiction to consider this appeal because it was not timely filed. (Cal. Rules of Court, rule 8.308(a); *People v. Mendez* (1999) 19 Cal.4th 1084, 1094–1095 (*Mendez*).)

PROCEDURAL BACKGROUND

Defendant was charged by information in count 1 with assault with a deadly or dangerous weapon (§ 245, subd. (a)(1)), and in count 2 with criminal threats (§ 422, subd. (a)). It was further alleged with respect to count 2 that defendant had personally used a deadly weapon. (§ 12022, subd. (b)(2).) Defendant represented himself at the preliminary hearing, but accepted appointed counsel at the July 13, 2017 arraignment hearing. Apparently before the appointment of counsel, defendant filed a document entitled, “Defense Memorandum in Support of Motion to Suppress Evidence Under Penal Code § 1538.5.” The motion sought suppression of defendant’s arrest “in its entirety.” Appointed counsel did not renew the motion, nor is there any indication in the record that the trial court ever ruled on the motion.

At a pretrial hearing on September 22, 2017, the trial court ordered the information amended by interlineation to add a violation of section 245, subdivision (a)(4) as count 3. Defendant then entered a plea of no contest to count 3, and, in accordance with the negotiated disposition, the trial court dismissed counts 1 and 2, along with the weapon use enhancement. Defendant was

placed on formal probation for 36 months conditioned in part on serving 228 days in the county jail, less 228 days' custody credit. The trial court also issued a protective order barring all contact with, and requiring defendant to stay 100 yards away from two protected persons and a specified location.

On October 23, 2017, defendant appeared in the trial court without counsel and advised the court he wanted to appeal. The court told him simply to file his appeal with the clerk. In addition, the court granted defendant's request that his probation conditions be modified to allow the use of medical marijuana or any drug prescribed by a licensed physician.

Defendant did not file his notice of appeal until November 28, 2017. The appeal "is based on the denial of a motion to suppress evidence under Penal Code section 1538.5"; defendant did not obtain a certificate of probable cause. (§ 1237.5; Cal. Rules of Court, rule 8.204(a)(2)(B).)

DISCUSSION

"[A] notice of appeal and any statement required by Penal Code section 1237.5 must be filed within 60 days after the rendition of the judgment" (Cal. Rules of Court, rule 8.308(a); *Mendez, supra*, 19 Cal.4th at p. 1094.) Section 1237 defines "final judgment" for purposes of taking an appeal as "[a] sentence, [or] an order granting probation." The same 60-day period after the rendition of judgment applies where the judgment of conviction is entered upon a plea of guilty, but the defendant must file the application for a certificate of probable cause as an intended notice of appeal. (Cal. Rules of Court, rule 8.308(a); § 1237.5; *In re Chavez* (2003) 30 Cal.4th 643, 650 (*Chavez*).) An appeal from a ruling on a suppression motion under section 1538.5 is exempted from the requirement of

obtaining a certificate of probable cause, but the notice must nevertheless conform to the 60-day rule. (*Mendez, supra*, 19 Cal.4th at p. 1096; *People v. Beuer* (2000) 77 Cal.App.4th 1433, 1436–1437.)

As our Supreme Court has explained, “the sole required procedural step of filing a notice of appeal is critical to rendering the appeal operative following a judgment of conviction. In general, a timely notice of appeal is “essential to appellate jurisdiction.” [Citation.] It largely divests the superior court of jurisdiction and vests it in the Court of Appeal. [Citation.] An untimely notice of appeal is “wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion of a party or on its own motion.”” (*Chavez, supra*, 30 Cal.4th at p. 650; *Mendez, supra*, 19 Cal.4th at p. 1094.)

Here, defendant entered his no contest plea, and the trial court pronounced judgment on September 22, 2017. Sixty days from rendition of the judgment was Tuesday, November 21, 2017, which was not a holiday.² But defendant did not sign or attempt to file his notice of appeal or the application for a certificate of probable cause until November 28, 2017, after the jurisdictional time period had expired. Thus, the notice of appeal was filed more than 60 days after the rendition of the judgment. “Unless the notice [of appeal] is actually or constructively filed within the appropriate filing period, an appellate court is without

² The 60-day deadline for filing a notice of appeal is computed by excluding the first day and including the last, unless the last day is a Sunday or a holiday, in which case the next business day becomes the deadline. (Code Civ. Proc., § 12.)

jurisdiction to determine the merits of the appeal and must dismiss the appeal.” (*In re Jordan* (1992) 4 Cal.4th 116, 121.)

Defendant did alert the trial court of his intent to appeal when he appeared in court on October 23, 2017, before the expiration of the 60-day time limit. But he did not actually file his notice of appeal until over a month later. Accordingly, because no timely notice of appeal was filed, we have no jurisdiction to hear this appeal and must dismiss it. (*Mendez, supra*, 19 Cal.4th at p. 1094; see Cal. Rules of Court, rule 8.60(d) [“For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause”].)

DISPOSITION

The appeal is dismissed.

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