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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. DIANA M. CALDAS, Defendant and Appellant.	B230948 (Los Angeles County Super. Ct. No. KA077539)

THE COURT:*

Appellant Diana M. Caldas appeals from the denial of her motion to withdraw her plea under Penal Code sections 1018 and 1016.5[1]. We appointed counsel to represent her on appeal. After examination of the record, counsel filed an "opening brief" containing an acknowledgement that she had been unable to find any arguable issues.

On January 17, 2012, we advised appellant that she had 30 days within which to personally submit any contentions or issues that she wished us to consider. On February 17, 2012, appellant filed a supplemental brief in which she argues that she was denied effective assistance of counsel regarding the immigration consequences of her

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* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

1 All further statutory references are to the Penal Code unless otherwise indicated.

2008 no contest plea and that the trial court that took her plea failed to conduct the detailed inquiry into whether the plea was the result of coercion by police or prosecution.

The record shows that an amended information was filed March 7, 2008, in case No. PA058835, charging appellant with 10 counts of receiving stolen property in violation of section 496, subdivision (a), one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11351, and one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11378. The information charged appellant with an allegation that she was on bail in case No. KA077539 at the time of the commission of these offenses.

The testimony at appellant's preliminary hearing revealed that she was engaged in a large-scale operation involving the theft of merchandise from major retailers. At the hearing, there was testimony from the manager of special investigations for Mervyn's stores; the regional manager of organized crime for Limited Brands (the parent company of Victoria's Secret, Express, Limited, and Bath and Body Works, among others); the regional loss prevention manager for Pacific Sunwear; and the organized retail crime manager for GAP Incorporated.

Detective Daniel Nee, a member of the interstate theft task force of the Los Angeles Police Department (LAPD), assisted in the execution of a search warrant at appellant's home in December 2006. Police found around $7,000 worth of stolen clothing and sporting goods in the residence and at a business on Wilshire Boulevard.

After appellant was released on bail, police began conducting periodic surveillance of her residence. She was observed loading boxes and bags of items from a truck to the inside of her home and back. Appellant was observed driving to a storage location with her codefendant Astudillo. Detective Nee saw appellant, Astudillo, and an older man back up a gold Lexus SUV (the car appellant normally drove) to the rear doors of a car dealership, after which various people took pieces of clothing and re-entered the dealership. Appellant was observed in other locations making apparent clothing transactions. Appellant and others were seen loading black plastic bags that appeared to

contain clothing onto a push cart and taking them into a storage facility. Detective Nee had photographs of these various activities.

On March 23, 2007, a search warrant was executed at appellant's residence, vehicle, and the storage facility. Inside appellant's Lexus, the police found a lot of clothing, merchandise credit return cards, receipts, over $4,300 in cash, lists of stores, keys, and what appeared to be pay and owe sheets. A search of a storage facility on Brand Boulevard yielded a "huge" quantity of clothing and shoes. Police also found a Tupperware tub containing an off-white powder resembling cocaine and crystalline material resembling methamphetamine. Detective Nee believed the narcotics were possessed for sale due to the location, packaging, and quantities. Store representatives visited the storage unit and identified their merchandise. An LAPD analyst later confirmed the presence of cocaine and methamphetamine in the seized contraband.

On August 6, 2008, appellant and several co-appellants entered into plea bargains. All of the appellants were advised of the constitutional rights they were giving up. They were admonished that "[i]f you are not now a United States citizen, you could be deported, denied naturalization or denied reentry into this country."

Appellant pleaded no contest in case No. PA058835 to one count of receiving stolen property and one count of possession for sale of cocaine. She admitted that in counts 1 through 11 she was out on bail in another matter within the meaning of section 12022.1. In case No. KA077539, appellant pleaded no contest to one count of receiving stolen property and one count of possession for sale of a controlled substance under Health and Safety Code section 11351. On September 24, 2008, the trial court sentenced appellant to the low term of 16 months in count 1, one-third the midterm (one year) in count 11, and two years for the on-bail allegation in case No. PA058835, for a total of four years and four months in that case. In case No. KA077539, the trial court sentenced appellant to the low term of 16 months and one-third the midterm (one year), to be served concurrently to the sentence in case No. PA058835. The remaining counts were dismissed. Appellant was awarded a total of 827 credit days.

Appellant signed and dated a notice of appeal form and a request for a certificate of probable cause on November 10, 2010. It appears the notice of appeal was not filed, but the certificate of probable cause was stamped as filed on December 19, 2010. The request for a certificate of probable cause stated as its grounds: "Withdrawal of guilty plea on lack of immigration advisements," citing sections 1018 and 1016.5, subdivision (d). Appellant attached two typewritten pages arguing ineffective assistance of counsel. Appellant asserted that if she had known her plea carried with it mandatory deportation and permanent inadmissibility she would have tried to plead to lesser included charges, gone to trial, or even pleaded to the "main count on the indictment."

On December 14, 2010, the trial court issued a minute order stating that "the appellant's moving papers have been read, considered and denied," and "the notice of appeal was not timely filed." On February 14, 2011, the trial court issued a nunc pro tunc order stating, in addition to the above, that "appellant's request for certificate of probable cause/motion to withdraw plea is denied."

On appeal from the denial, appellant adds a new contention that she did not raise below, i.e., that the trial court failed to establish that her plea was not involuntary. She cites cases such as *In re Ibarra* (1983) 34 Cal.3d 277 and *U.S. v. Martinez-Molina* (1st Cir. 1995) 64 F.3d 719, which state that courts must ensure that pleas entered into by codefendants, so-called package deals, are carefully scrutinized to determine whether they were voluntary.

Appellant has forfeited this claim. The California Supreme Court has repeatedly held that constitutional objections, like other objections, must be raised in the trial court in order to preserve them for appeal. (See, e.g., *People v. Williams* (1997) 16 Cal.4th 153, 250 [forfeit of First, Eighth, and Fourteenth Amendments]; see also *People v. Ross* (1994) 28 Cal.App.4th 1151, 1157, fn. 8 [forfeit of claim of cruel and unusual punishment].) Even if appellant had not forfeited this issue, we would reject it.

At the pretrial proceeding in which three of appellant's codefendants (Dominguez, Garcia, and Delgado) were prepared to plead, the prosecutor stated, "Defendant Caldas

wishes to enter a plea but I can't extend the offer without her co-defendant Astudillo, based on the fact that they were intertwined in all of the counts and Mr. Astudillo does not wish to accept his offer. The offer as to Caldas was five years state prison. That would encompass both of her cases before the court. Her maximum is 13 years and four months. Defendant Astudillo, his maximum is 21 years and four months. We have offered him six years state prison. He does not wish to accept the offer. So that is the holdup." Thus we see that it was Astudillo, and not appellant, who may have felt some pressure to plead—although we do not believe the pressure was any greater than that which generally accompanies such a decision. After being explained that a two-year sentence, and then a five-year sentence, was out of the question, Astudillo eventually agreed to plead in exchange for a six-year sentence. As noted, appellant was ultimately sentenced to only four years and four months and received 827 days of credits.

The remainder of appellant's supplemental brief essentially reiterates her arguments below, i.e., that her counsel was ineffective in failing to explain the immigration consequences of her plea. Appellant's ineffective assistance of counsel claims are not properly raised in a motion under section 1016.5. (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1285.) As noted, the prosecutor, on behalf of the trial court, properly admonished her of the immigration consequences of her plea as required by section 1016.5. With respect to her 2010 notice of appeal and request for certificate of probable cause based on the 2008 plea, the trial court was clearly correct in ruling it untimely. The time for filing a notice of appeal is within 60 days after judgment is rendered. Finally, a defendant must request the withdrawal of a guilty or no contest plea under section 1018 prior to judgment.

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

The orders under review are affirmed.

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