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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.

WILLIAM M. LYONS,

Defendant and Appellant.

B288564

(Los Angeles County  
Super. Ct. No. MA065323)

APPEAL from an order of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Affirmed.

Law Offices of Jack T. Weedin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant and appellant William Morris Lyons entered pleas of no contest to two counts of felony child abuse, and dissuading a witness by force or threat. The trial court sentenced him to 10 years 8 months in the state prison, but suspended execution of the sentence and placed him on probation. Lyons admitted to being in violation of probation and the court executed the sentence. He appeals the order. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On November 20, 2014, Desirae W., a thirteen-year old girl, witnessed an altercation between her mother and Lyons. Lyons was on top of her mother, punching her. Lyons then held a knife to Desirae W.'s throat and told her not to say anything or he would "do something" to her. Desirae W. testified that she believed Lyons would slit her throat if she told anyone.

Approximately one week later, on November 27, 2014, Desirae W. was left alone with Lyons and ordered to clean the kitchen by her mother. In fear of Lyons, Desirae W. stayed in her room until she had to use the restroom. When she exited her room, Lyons yelled at her for not cleaning the kitchen and held a knife to her throat. He called her a "bitch" and told her that she was disrespectful. Desirae W. testified that she believed Lyons was going to slit her throat, and that her life was in danger.

After a preliminary hearing, Lyons was charged by amended information with two counts of assault with a deadly

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<sup>1</sup> Because Lyons entered pleas before any evidence was adduced at trial, we derive the facts from the evidence presented at the preliminary hearing.

weapon (Pen. Code, § 245, subd. (a)(1)),<sup>2</sup> two counts of child abuse (§ 273a, subd. (a)), and dissuading a witness by force or threat (§ 136.1, subd. (c)(1)). The information also alleged Lyons used a dangerous or deadly weapon, a knife, in the commission of child abuse (§ 12022, subd. (b)(1)) and had suffered two prior felony convictions, one for voluntary manslaughter (§ 192, subd. (a)) which was a “strike” (§§ 667, subs. (b)-(i), 1170.12, subs (a)-(d)), a serious felony (§ 667, subd. (a)), and a prior prison term within the meaning of section 667.5, subdivision (b).

On July 6, 2015, Lyons entered pleas of no contest to two counts of child abuse and admitted use of the knife during the commission of those offenses. He also entered a plea of no contest to having dissuaded a witness, and admitted that he had been sentenced to a prior prison term within the meaning of section 667.5, subdivision (b) as to all three counts.

Before Lyons entered pleas, the trial court advised him of his constitutional rights, the consequences of his pleas, and the potential immigration consequences. Lyons indicated that he understood and waived his rights. He also waived his right to have the same judge who took the plea sentence him.

The court suspended execution of the sentence and placed Lyons on formal probation for five years. The terms and conditions of probation included 90 days of community labor, a one-year parenting program, and 26 sessions of anger management in a court-approved program.

The court suspended execution of a 10 year 8-month prison sentence calculated as follows: on Count 2, child abuse, the court imposed the high term of six years and an additional year for

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<sup>2</sup> All further undesignated statutory references are to the Penal Code.

each of two special allegations; on Count 3, dissuading a witness, the court imposed one-third the midterm (one year) consecutive to Count 2; on Count 5, child abuse, the court imposed one-third the midterm (one year four months) consecutive to Counts 2 and 3, and an additional four months (one-third of the one-year term) for having used a dangerous or deadly weapon.

After being placed on probation, Lyons admitted being in violation of probation on three separate dates. On October 22, 2015, Lyons failed to appear for his scheduled progress report. He admitted the violation on October 28, 2015 and waived time for sentencing until December 1, 2015. On that date, Lyons showed that he had enrolled in the parenting classes and probation was reinstated on the same terms and conditions.

On June 3, 2016, Lyons again failed to appear in court for his scheduled progress report. The court summarily revoked probation and issued a no bail bench warrant. On July 12, 2016, Lyons was held in custody on the warrant. Although Lyons had been arrested on a new case from Kern County, that case had been dismissed and the court did not consider it for purposes of a violation. On October 12, 2016, Lyons admitted that he had failed to appear on June 3, 2016, and that he had tested positive for the use of an illegal substance. He waived time for sentencing on the violation and on January 17, 2017, was released for transportation to a residential rehabilitation facility. The terms of probation were modified to include completion of a 90-day residential rehabilitation program in addition to the previous terms and conditions of probation.

On May 11, 2017, Lyons appeared for his scheduled progress report which stated that he had tested positive for the use of illegal substances. He admitted the violation and waived

time for sentencing until June 7, 2017. The court indicated that probation remained revoked until that date, and that if Lyons was “back in step” with his program and did not have any further violations or positive tests, the court would reinstate probation on the same terms and conditions.

On June 1, 2017, the court received information from the residential rehabilitation facility that Lyons had tested positive for illegal substances twice more and failed to appear for a test on May 17, 2017. The court issued a no bail bench warrant and probation remained revoked.

On October 12, 2017, Lyons appeared in court on the warrant. The court considered that he had been hospitalized for some time while the case was in warrant status. Lyons again admitted that he was in violation of probation for having tested positive for illegal substances on May 12, 31, and June 9, 2017. The court ordered termination of probation and executed the 10 year 8-month state prison sentence.

Lyons failed to file a timely notice of appeal. This court issued an order on April 12, 2018, granting relief from default from a failure to file a timely notice of appeal and authorization to submit a notice of appeal and certificate of probable cause to the clerk of the superior court. On April 24, 2018, appellant filed his notice of appeal and certificate of probable cause which was granted on April 27, 2018.

### **DISCUSSION**

After review of the record, Lyons’ court-appointed counsel filed an opening brief that raised no issues, and requested this court conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We advised Lyons that he had 30 days to submit by brief or letter any contentions or

argument he wished this court to consider. We have received no response.

Lyons' notice of appeal purports to challenge the validity of his admission to the probation violation, and matters occurring after the plea that do not affect the validity of the plea. His request for a certificate of probable cause appears to ask this court to reverse the trial court's execution of the 10 year 8-month sentence following his admission to the probation violation because he complied with the terms and conditions of his probation, did not commit a new crime, did not willfully fail to appear, and did not engage in conduct that warranted a state prison sentence.

However, Lyons' claims are not cognizable on appeal. Because a plea admits every element of the crime and constitutes a conviction, "issues going to the determination of guilt or innocence are not cognizable on appeal; review is instead limited to issues going to the jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea." (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1178.) This is true regardless of whether the defendant obtains a certificate of probable cause. (*Ibid.*) Principles precluding appeal from a guilty plea apply equally to a judgment following the admission of a probation violation. (*People v. Billetts* (1979) 89 Cal.App.3d 302, 306.)

We have examined the record and are satisfied no arguable issues exist and Lyons' attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441–442.)

**DISPOSITION**

The order is affirmed.

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MURILLO, J.\*

We concur:

EDMON, P. J.

EGERTON, J.

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