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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY HOWARD,

Defendant and Appellant.

B282504

(Los Angeles County
Super. Ct. No. VA141822)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvonne Sanchez, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Billy Howard appeals following his plea of guilty to possession of a controlled substance with a specified prior

conviction. Defendant's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, stating that no arguable issue exists and requesting that this court independently review the record. Defendant, informed of his right to submit any contentions or argument he wished the court to consider, submitted a supplemental brief in the form of a letter. We have reviewed the entire record and find no arguable issue. We therefore affirm the judgment.

FACTUAL BACKGROUND

At the preliminary hearing, Los Angeles Deputy Sheriff Miguel Paz testified that on April 8, 2016, defendant was seen dropping a plastic baggie containing an off-white, rock-like substance, which the deputy recovered next to defendant's right foot. The substance tested positive for cocaine with a net weight of 0.08 grams.

PROCEDURE

Defendant was charged with one count of possession of a controlled substance after a specified prior conviction. (Health & Saf., § 11350, subd. (a).) It was alleged that he had previously been convicted of a lewd or lascivious act involving a child under 14 years of age (Pen. Code, § 288, subd. (a)), and therefore was to be sentenced pursuant to Penal Code sections 667, subdivisions (b) through (j), and 1170.12, subdivision (b), and serve his sentence in state prison pursuant to Penal Code section 1170, subdivision (h)(3).

On April 6, 2017, in accordance with a plea agreement, defendant pled guilty to the charge and admitted to the prior conviction. The court imposed the upper term of three years to be served in state prison. In the interest of justice, the court struck the prior conviction insofar as it would lead to an increased

sentence under Penal Code section 1170.12. The court also awarded credits and imposed fines and fees.

Defendant timely appealed, but did not request a certificate of probable cause.

DISCUSSION

In his letter to this court, defendant asserts that because he was hospitalized after an automobile accident, he “was unable to attend court on at least one occasion.” He claims that his counsel represented him in court and his “trial continued without me present.” Defendant argues that this violated his rights to present a defense and confront witnesses against him under the Sixth and Fourteenth Amendments to the United States Constitution.

Normally a defendant cannot appeal from a guilty plea unless granted a certificate of probable cause by the trial court. (Cal. Rules of Court, rule 8.304(b)(1).) There are two exceptions: a certificate is not required if the appeal is based on “[t]he denial of a motion to suppress evidence under Penal Code section 1538.5,” or “[g]rounds that arose after entry of the plea and do not affect the plea’s validity.” (Rule 8.304(b)(4)(B).)

Defendant did not request a certificate of probable cause. Thus, to the extent his claim is based on court proceedings he missed prior to taking his plea, his appeal is not cognizable, as those grounds arose before entry of the plea. Even if the appeal were cognizable, the record does not indicate that defendant missed any proceedings due to hospitalization. Two minute orders dated March 9 and April 5, 2017, indicated defendant was “present (in lock up),” and three other minute orders stated that defendant was present in court. As to the two appearances in which defendant was “in lock up,” the proceedings consisted only

of trailing the matter to a later date. Defendant was not denied an opportunity to present a defense or confront witnesses.

As to postplea matters, defendant was present on April 6, 2017, when he took his plea and was sentenced. The record does not indicate any further proceedings after this date, so there was nothing for defendant to miss.

Defendant's appellate counsel filed a brief identifying no appealable issues. We have reviewed the entire record and find no arguable issue on appeal and are satisfied that defendant's attorney has fully complied with the responsibilities of counsel. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; see *People v. Kelly* (2006) 40 Cal.4th 106, 111; *People v. Wende*, *supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.