Filed 1/18/17 In re Everett CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re RONALD EVERETT, JR., on Habeas Corpus.	B269458 (Los Angeles County Super. Ct. No. YA084595)

ORIGINAL PROCEEDINGS on petition for writ of habeas corpus. Scott T. Millington, Judge. Petition denied.

Melissa Hill, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, and Idan Ivri, Deputy Attorneys General, for Respondent.

Pursuant to a negotiated agreement Ronald Everett, Jr. entered a plea of no contest to two counts of second degree robbery and admitted he had personally used a firearm in committing the offenses and had suffered a prior serious or violent felony conviction. A number of other charges and special allegations, including five counts of aggravated kidnapping, were dismissed; and Everett was sentenced in accordance with the agreement to an aggregate state prison term of 23 years. We affirmed the conviction. (*People v. Everett* (July 18, 2016, B262099) [nonpub. opn.].)

In this petition for writ of habeas corpus, Everett now contends the trial court improperly advised him at the time of his plea that he would be able to appeal the court's pre-plea rulings, which he asserts he understood to include the court's order denying his motion pursuant to Penal Code section 995[1] to dismiss the five aggravated kidnapping counts and specially alleged criminal street gang enhancements, even though the court dismissed those charges at the time of his plea. Everett further contends, because of the erroneous advisement and his counsel's failure to correct it, he pleaded no contest to the two robbery counts under the mistaken belief, if he were successful on appeal, he would be able to negotiate a new plea agreement or go to trial on the charges that had not been dismissed.

Everett has not demonstrated the court or his counsel advised him he could appeal a ruling regarding charges that were dismissed as part of the plea agreement, let alone that he would be able to withdraw his no contest plea if his appeal of the dismissed counts were successful. He has also failed to

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[1] Statutory references are to this code.

demonstrate he would not have entered the no contest plea but for the allegedly erroneous advice he received. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

An information filed October 24, 2013 charged Everett with five counts of kidnapping for the purpose of robbery (§ 209, subd. (b)(1)) (counts 1 through 5), one count of attempted robbery (§§ 211, 664) (count 6) and seven counts of second degree robbery (§ 211) (counts 7 through 13). The information specially alleged as to all counts that a principal had personally used a firearm in committing the offenses (§ 12022.53, subds. (b) & (e)(1)) and that each offense was committed to benefit a criminal street gang (§ 186.22, subd. (b)(1)(C)). The information also alleged Everett had suffered a prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12) and section 667, subdivision (a)(1), and had served a prior prison term for a felony (§ 667.5, subd. (b)). Everett pleaded not guilty and denied the special allegations.

2. *Everett's Section 995 Motion*

On February 21, 2014 Everett moved pursuant to section 995 to dismiss the aggravated kidnapping charges and the criminal street gang enhancement allegations, contending he had been held to answer those charges without reasonable or probable cause. (§ 995, subd. (a)(2)(B).) In particular, Everett argued the evidence presented at the preliminary hearing that he and his confederates, members of the Nutty Block Crips gang, had moved the robbery victims to different rooms throughout the retail store during the charged robberies was insufficient to show

they had increased the risk of harm to the victims beyond that necessary to accomplish the robbery and thus as a matter of law did not amount to aggravated kidnapping. He also argued the evidence was insufficient to support the allegation he committed the offenses to benefit a criminal street gang. The trial court denied the motion on March 3, 2014.[2]

3. *Everett's No Contest Plea and Admission of Special Allegations*

On January 15, 2015 Everett agreed, orally and in writing, to plead no contest to two counts of second degree robbery and to admit the firearm-use allegations as to both counts, as well as the prior serious felony conviction allegation for purposes of section 667, subdivision (a), and the three strikes law. His counsel, deputy public defender Nan Whitfield, explained Everett's decision, "On behalf of Mr. Everettt I do want to put on the record this is a *People v. West* plea. He's taking advantage of the People's offer because he does not want to risk the chance of receiving a sentence of 125 years to life. He wanted to fight this case and has been fighting this case, but he wanted to be clear it's completely *People v. West*. The only reason why he's pleading, he doesn't want to take a risk."

After Ms. Whitfield addressed the court, Albert DeBlanc, counsel for one of Everett's codefendants, mentioned a possible

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[2] Both of Everett's codefendants, John Ross Craig and Trevon Deshawn Tresvant, also filed section 995 motions making the same arguments. Following the trial court's denial of the three motions, Craig filed a petition for writ of prohibition in this court seeking review of the denial of his motion. Everett did not file his own petition or join Craig's. On March 18, 2014 we summarily denied Craig's petition.

appeal following the no contest pleas. The court inquired, "Is there an agreement of waiver of appellate rights, or are they still allowed to do that?" The prosecutor replied, "That's not something we had discussed." The court then stated, "As far as I'm aware, they'll still be allowed to appeal," and then continued, "Just so the record is clear, Mr. DeBlanc mentioned something about appellate rights. Doesn't appear there was any negotiation about waiver of those appellate rights, so I want to make sure the record is clear that the defendants are entering this plea and still have the opportunity to appeal this court's earlier decisions." Ms. Whitfield was silent during this brief discussion of appellate rights.

Everett then expressly waived his constitutional rights, and his counsel joined in that waiver. Finding Everett's waivers, plea and admissions voluntary, knowing and intelligent, the court accepted Everett's plea and admissions and sentenced him in accordance with the negotiated plea agreement to an aggregate state prison term of 23 years.[3]

4. *Everett's Petition for Writ of Habeas Corpus*

On January 12, 2016, while his direct appeal was pending in this court, Everett filed a petition for writ of habeas corpus asserting the trial court had erroneously advised him he could appeal its pretrial rulings, which he understood to include the court's denial of his pre-plea motion to dismiss the aggravated

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[3] Everett's sentence consisted of consecutive terms of six years (the three-year middle term doubled under the three strikes law) and two years (one-third the middle term doubled) for the two counts of robbery, plus 10 years for one firearm-use enhancement plus five years for the prior serious felony enhancement.

kidnapping counts and the criminal street gang enhancement allegations. Everett claimed the court's purported misadvisement and his counsel's failure to correct the court's error induced him to enter his no contest plea.[4] Everett included with his petition a transcript of the plea hearing, a declaration from his trial counsel that she had understood the court's advisement to state that Everett would retain his right to appeal the court's ruling denying the section 995 motion (even though the kidnapping counts and special allegations that were challenged in the motion would be dismissed as part of his plea agreement)[5] and that she did not know or advise Everett he would forfeit that right if he accepted the plea agreement.

Everett also included his own declaration in which he averred, "I was pressured to agree to the plea bargain by my co-defendants, their attorneys, and my attorney" and "I agreed to the plea bargain with the express understanding that I would have a right to appeal from the trial court's earlier adverse rulings and the plea itself. [¶] Pursuant to the plea bargain, I pled no contest to two counts of robbery [and] admitted [the truth of] a prior serious felony conviction . . . and . . . a firearm enhancement. [¶] At the time of the plea[], the trial judge said in

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[4] Everett did not seek to set aside his no contest plea in the trial court. (See § 1018 ["[o]n application of the defendant at any time before judgment . . ., the court may . . . for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted"].)

[5] In her declaration Ms. Whitfield asserts, "I advised the Court that Mr. Everett wanted to retain his ability to file an appeal, irrespective of his entering the no contest pleas." The transcript of the plea hearing does not support that statement.

open court that the defendants, including myself, . . . were not giving up the right to appeal the court's earlier rulings. [¶] I would not have pled no contest to any of the charges pursuant to a plea bargain had I been advised and/or understood that by doing so, I would be giving up my right to appeal. [¶] I was not advised by either the trial court or my attorney, and did not understand that, if I pled no contest, the only issues that could be raised on appeal would be issues arising after the no contest pleas were entered, such as sentencing errors."

On April 27, 2016 we issued an order to show cause as to why the petition for writ of habeas corpus should not be granted. On June 7, 2016 the People filed their return, and on July 6, 2016 Everett filed a traverse.

DISCUSSION

1. *Governing Legal Principles*

a. *The pleading burden when seeking relief on habeas corpus*

""For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended."" (*In re Avena* (1996) 12 Cal.4th 694, 710.) "'Because a petition for writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to prove them.' [Citation.] The petitioner 'must prove, by a preponderance of the evidence, facts that establish a basis for relief on habeas corpus.'" (*In re Price* (2011) 51 Cal.4th 547, 559.)

b. *Advisements concerning appellate review following a plea of guilty or no contest*

A criminal defendant who appeals following a plea of no contest or guilty without obtaining a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (*People v. Johnson* (2009) 47 Cal.4th 668, 676-677; Cal. Rules of Court, rule 8.304(b)(1).) "[W]hen a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the 'jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.'" (*In re Chavez* (2003) 30 Cal.4th 643, 649; accord, *People v. Maultsby* (2012) 53 Cal.4th 296, 302-303; see *People v. Kaanehe* (1977) 19 Cal.3d 1, 9 ["[o]ther than search and seizure issues which are specifically made reviewable by section 1538.5 . . . , all errors arising prior to entry of a guilty plea are waived, except those which question the jurisdiction or legality of the proceedings resulting in the plea"]; *People v. DeVaughn* (1977) 18 Cal.3d 889, 896 [plea improperly induced].)

For a guilty or no contest plea to be intelligent and voluntary, the defendant must be advised of the constitutional rights being waived and the direct consequences of the plea. (*People v. Villalobos* (2012) 54 Cal.4th 177, 181; *In re Moser* (1993) 6 Cal.4th 342, 351; *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) However, the trial court is not required to

advise a defendant of the limited nature of a permissible appeal following a guilty plea. (See *People v. Bloom* (1989) 48 Cal.3d 1194, 1225, fn. 8 ["[a] guilty plea 'severely restricts the defendant's right to appeal from the ensuing judgment' [citation], yet this court has never suggested that a defendant indicating a willingness to enter a guilty plea should or must be advised of this consequence"]; accord, *In re Chadwick C.* (1982) 137 Cal.App.3d 173, 180 ["[t]here is no duty to advise of the section 1237.5 consequences of a plea"].)[6]

Although the court need not admonish the defendant of his or her limited appellate rights following a guilty or no contest plea, if such a plea is taken premised on an illusory promise of appeal, it may be considered involuntary. (See *People v. DeVaughn*, *supra*, 18 Cal.3d at p. 896 [defendant may attack plea on the ground it was entered based solely on trial court's illusory promise defendant could appeal its earlier ruling determining his confession was voluntary]; *People v. Hollins* (1993) 15 Cal.App.4th 567, 574-575 [illusory promise of appealability by

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[6] "Section 1237.5 states broadly that '[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.' [Citation.] . . . Section 1237.5 was intended to remedy the unnecessary expenditure of judicial resources by preventing the prosecution of frivolous appeals challenging convictions on a plea of guilty." (*People v. Johnson*, *supra*, 47 Cal.4th at p. 676.)

trial court was ground for vacating plea when plea would not have been entered but for court's assurances defendant could appeal ruling denying his motion to dismiss crime to which he had pleaded].) Even then, however, to obtain relief the defendant must show not only a misadvisement but also prejudice—that is, he or she must demonstrate "but for the trial court's erroneous advice, . . . the defendant would not have entered the guilty plea." (*In re Moser, supra,* 6 Cal.4th at p. 345; see *People v. Archer* (2014) 230 Cal.App.4th 693, 706 [burden is on defendant to prove prejudice resulting from misadvisement as to consequences of the plea].) Simply alleging "that had he properly been advised, he would not have entered his plea of guilty" is insufficient to demonstrate prejudice when "there is nothing in the record on appeal to support this contention." (*People v. McClellan* (1993) 6 Cal.4th 367, 378.)

c. *Ineffective assistance of counsel*

The right to counsel guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution "includes, and indeed presumes, the right to effective counsel. . . ." (*Corenevsky v. Superior Court* (1984) Cal.3d 307, 319; accord, *Elijah W. v. Superior Court* (2013) 216 Cal.App.4th 140, 150.) "'To establish ineffective assistance of counsel, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient performance was prejudicial, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the defendant.'" (*People v. Johnson* (2015) 60 Cal.4th 966, 979-980; accord, *In re Crew* (2011) 52 Cal.4th 126, 150; see *Strickland v. Washington* (1984) 466 U.S.

668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].) "'The burden of sustaining a charge of inadequate or ineffective representation is upon the defendant. The proof . . . must be a demonstrable reality and not a speculative matter.'" (*People v. Karis* (1988) 46 Cal.3d 612, 656; accord, *People v. Vines* (2011) 51 Cal.4th 830, 875.)

In the context of plea acceptance, "to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." (*Hill v. Lockhart* (1985) 474 U.S. 52, 59 [106 S.Ct. 366, 88 L.Ed.2d 203].) "[B]ecause the question is *what the defendant would have done*, relief should be granted if the court . . . determines the defendant would have chosen not to plead guilty or nolo contendere, even if the court also finds it not reasonably probable the defendant would thereby have obtained a more favorable outcome." (*People v. Martinez* (2013) 57 Cal.4th 555, 559.)

2. *The Trial Court Did Not Prejudicially Mislead Everett*

Everett contends his no contest plea must be set aside because he was misled by the trial court and his counsel into believing to his detriment that he could appeal the denial of his section 995 motion, which was directed to the aggravated kidnapping counts and the gang enhancement allegations, not the robbery counts to which he would be pleading, and, if successful on appeal, he could then withdraw his plea and either go to trial on the remaining charges or renegotiate his plea agreement. The transcript of the plea hearing, quoted above, belies Everett's claim as it relates to his purported reliance on any misadvisement by the trial court.

First, because the plea agreement with Everett and his two codefendants contained no waiver of appellate rights, the court properly confirmed that, following the plea, the defendants would retain their appellate rights. They did; but, as discussed, those rights are limited to issues relating to the validity of the plea or the denial of a motion to suppress evidence under section 1538.5. The court did not state the defendants could appeal its denial of their section 995 motions, let alone advise Everett, whose counsel was silent during this exchange, that he would be entitled to vacate his plea if such an appeal were successful.

Everett's argument he was misadvised is predicated entirely on the court's passing reference to the appealability of its "earlier decisions," which he contends was not a generic reference to appellate rights following a guilty or no contest plea but was tantamount to a specific advisement he could appeal the order denying his section 995 motion. That must be so, Everett argues, because that was the only ruling this judge had previously made.[7] However, because the plea agreement specifically provided for dismissal of the kidnapping counts and gang allegations to which

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[7] As discussed, all three defendants filed section 995 motions and made identical arguments challenging the sufficiency of the evidence to support the asportation element of the aggravated kidnapping counts and the criminal street gang allegations. The trial court, after hearing oral argument by defense counsel and the prosecutor, denied the three motions in a joint oral ruling, simply stating, "The 995 is respectfully denied as to all counts and allegations." When discussing the defendants' retention of their right to appeal during the plea hearing, however, the court referred generally to the court's "earlier decisions" in the plural, an odd construct if the court intended to specifically identify its unitary section 995 ruling.

the section 995 motion had been directed, an appeal to determine whether there was probable cause to hold Everett to answer on those charges could serve no useful purpose without the added promise that Everett would be allowed to withdraw his plea after a successful appeal. Yet neither Everett nor his trial counsel contend the court said anything at the plea hearing that would even impliedly suggest Everett's plea agreement was potentially subject to further negotiation based on the outcome of an appeal from dismissed charges. To the contrary, Everett confirmed that no additional promises, other than those actually stated on the record, had been made to induce him to enter the plea.

The lack of any specific reference to an appeal from the ruling on the section 995 motions and the absence of any connection between that ruling and the charges to which Everett actually pleaded no contest distinguish the case at bar from the authorities on which Everett relies. For example, in *People v. Bowie* (1992) 11 Cal.App.4th 1263, following his conviction by a jury of first degree burglary, the defendant admitted he had suffered a prior serious felony conviction after being expressly—and incorrectly—assured by the trial court his admission preserved his right to appeal whether his federal bank robbery conviction actually constituted a serious felony under section 667, subdivision (a). (*Bowie*, at p. 1268.) Our colleagues in Division Five of this court reversed the section 667, subdivision (a), sentence enhancement and remanded the matter for further proceedings: "Since it clearly appears that appellant only admitted the enhancement allegation after being assured that he could appeal [the question whether the prior conviction was a serious felony under section 667, subdivision (a)], this admission

was improperly induced and constitutes grounds for reversal . . . ." (*Bowie*, at p. 1268)

Bowie differs from the case at bar not only because the trial court's erroneous assurance the defendant would retain his right to appeal was explicitly directed to the specific legal issue the defendant had raised but also because the admission that followed this incorrect assurance led to the imposition of a five-year sentence enhancement. In addition, the record in *Bowie* left no doubt the court's misstatement prompted the admission: The defendant had been uncertain whether to insist on a trial on the prior conviction allegation, and the court gave its erroneous advice "[t]o aid appellant in coming to a conclusion." (*People v. Bowie*, *supra*, 11 Cal.App.4th at p. 1267.)

Here, in contrast, as we have explained several times, the charges at issue in the section 995 motion were dismissed. Moreover, Everett's counsel told the court the only reason her client was agreeing to the plea was to avoid the risk of a much longer sentence if he went to trial and was convicted on all pending charges. (Everett has now alleged he was pressured to plead no contest by his codefendants and their attorneys because they wanted to benefit from a "package" plea bargain.) Neither Everett nor Ms. Whitfield, his attorney, indicated during the plea hearing any intention to appeal from the denial of the section 995 motion.[8]

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[8] In her declaration Ms. Whitfield contends there was "an implied presumption" that Everett intended to appeal from the denial of his section 995 motion. How such an implied presumption, whatever that may be, is the equivalent of an express misadvisement by the court remains unexplained.

Similarly, in *In re David G.* (1979) 93 Cal.App.3d 247, also cited by Everett, the Court of Appeal permitted a minor to withdraw his admission of allegations in a delinquency petition because the record established the admissions were predicated on the minor's misunderstanding, shared by the juvenile court and the prosecutor, that he would be able to appeal the denial of his motion to suppress evidence after he had been declared a ward of the juvenile court. (*Id.* at p. 255.) At the suppression hearing the minor's counsel, the district attorney and the court had all referred to the motion to suppress as a section 1538.5 motion. (*In re David G.*, at p. 251.) Pursuant to section 1538.5, subdivision (m), a defendant has a right to appellate review of the validity of a search or seizure following an unsuccessful suppression motion even if the conviction is based on a plea of guilty. In what it described as an issue of first impression, the Court of Appeal in *In re David G.* held section 1538.5 did not apply to juvenile court proceedings and the statutory right to appeal notwithstanding a guilty plea was, therefore, not available to a minor declared a ward of the juvenile court. (*In re David G.*, at p. 252.)[9] Because the minor had been misled as to his appellate rights, the People conceded, and the appellate court

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[9] The year following the decision in *In re David G.*, *supra*, 93 Cal.App.3d 247, the Legislature enacted Welfare and Institutions Code section 700.1 and amended Welfare and Institutions Code section 800 (Stats. 1980, ch. 1095, §§ 2, 4, pp. 3511-3512) providing for a motion in juvenile proceedings to suppress evidence from an unlawful search or seizure and authorizing review on appeal of the ruling on the motion "even if the judgment is predicated upon an admission of the allegations of the petition." (See Welf. & Inst. Code, § 800, subd. (a).)

agreed, a remand was appropriate with directions to permit the minor to withdraw his admission of allegations in the wardship petition allegations. (*Id*. at p. 255.)

As in *Bowie* and unlike the case at bar, in *In re David G.* the trial court's error regarding the retention of appellate rights and the direct causal relationship between that error and the minor's decision to admit his criminal conduct was apparent on the record. (See also *People v. Coleman* (1977) 72 Cal.App.3d 287, 292-293 [defendant allowed to withdraw his guilty plea when his counsel expressly informed the court the defendant intended to appeal the denial of his motion to disclose the identity of an informant and the trial court, although stating the question of appealability would have to be resolved by the Court of Appeal, issued a certificate of probable cause to facilitate the appeal]; *People v. Hollins*, *supra*, 15 Cal.App.4th at pp. 570-571 [trial court erroneously induced defendant to enter negotiated plea to drug charge by stating right to appellate review of the denial of his request for disclosure of the surveillance location had been preserved; case remanded to allow defendant to withdraw plea].)

In sum, Everett has failed to make the showing necessary to support his contentions that the trial court misstated his postconviction appellate rights and that, but for the trial court's purported misadvisement, he would not have entered the plea agreement. In the words of his counsel, Everett accepted the plea deal "because he does not want to risk the chance of receiving a sentence of 125 years to life," not because he was told by the court he could appeal the denial of the section 995 motion and then, if successful, renegotiate the terms of the agreement offered by the People.

3. *Everett Has Not Demonstrated Ineffective Assistance of Counsel*

In her declaration in support of Everett's petition for writ of habeas corpus, Ms. Whitfield, Everett's trial counsel, conceded, "I was not aware, and therefore failed to advise Mr. Everett that by pleading no contest, he was giving up his right to appeal the denial of the Penal Code section 995 motion." We agree a lawyer in Ms. Whitfield's position probably should have known the consequences of a no contest or guilty plea, including the limited appellate rights available to a defendant following a plea. Her lack of knowledge on this point falls below an objective standard of reasonableness. Notably, however, Ms. Whitfield did not assert she communicated to Everett her belief he could appeal the denial of his section 995 motion (it was merely "an implied presumption") and did not state she believed, let alone advised Everett, a successful, postconviction appeal of the section 995 motion would permit him to withdraw his no contest plea to charges that were not addressed by that motion.

For his part, although Everett in his declaration stated he understood he would have a right to appeal from the trial court's "early adverse rulings, and the plea itself," he did not declare he had gained that understanding from Ms. Whitfield or that he discussed with her the effect, if any, an appeal from the denial of the section 995 motion concerning the aggravated kidnapping and criminal street gang charges would have on his no contest plea to the robbery counts and firearm enhancement allegations. Because the trial court did not misadvise the defendants during the plea hearing about their appellate rights, Ms. Whitfield's failure to correct Everett's uncommunicated, subjective misunderstanding of those rights was not conduct that fell below

an objective standard of reasonableness. (See *People v. Johnson*, *supra*, 60 Cal.4th at p. 979; *Strickland v. Washington*, *supra*, 466 U.S. at p. 694.)

Moreover, as discussed, even if Everett's misunderstanding of his postconviction appellate rights were attributable to his counsel's failure to properly advise him, he has failed to establish her deficient performance was prejudicial. Everett entered the plea because of pressure from his codefendants and their lawyers, who wanted to take advantage of a "package deal"; additional pressure from Ms. Whitfield, which, based on their declarations, did not include any discussion of his right to appeal the section 995 motion; and his own desire to avoid the risk of a sentence more than five times longer than the 23-year sentence to which he agreed. However, even if Everett were somehow successful on his hypothetical appeal from the ruling on the section 995 motion, he would have faced a state prison sentence of more than 60 years if convicted on the remaining eight robbery and attempted robbery counts with the attendant firearm-use and prior serious felony enhancements. Given the other factors that indisputably influenced Everett's decision to accept the proffered plea bargain and were not dependent in any respect on "an implied presumption" he could appeal the section 995 ruling, his present unsupported claim he would not have entered the plea if he had been properly advised by Ms. Whitfield is insufficient to establish a prima facie case of prejudice. (See *In re J.V.* (2010) 181 Cal.App.4th 909, 914 [defendant's "bare assertion of prejudice is not enough. Neither in juvenile court nor on appeal has J.V. demonstrated he would not have entered a plea if he had been advised about the requirement to register as a gang member."]; *In re Vargas* (2000) 83 Cal.App.4th 1125, 1140

["when defendants claim they received ineffective assistance of counsel at the plea bargain stage, they must show that had they received effective representation, they would not have accepted the offer. [Citations.] A defendant's statement to that effect is not sufficient. Rather, there must be some objective showing."].)

DISPOSITION

The petition is denied.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL J.