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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE PAUL SANCHEZ,

Defendant and Appellant.

2d Crim. B297828
(Super. Ct. No. 2013006591)
(Ventura County)

On January 6, 2017, a jury convicted appellant Steve Paul Sanchez of possession of both a controlled substance and a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 1), possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1); count 2),¹ possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a); count 3) and being a felon in possession of ammunition (§ 30305, subd. (a)(1); count 4). Three

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

prior prison allegations were also found true (former § 667.5, subd. (b).)

The trial court sentenced appellant to the middle term of three years on count 1 and imposed two consecutive one-year terms for prison priors. It also imposed a consecutive eight-month term on count 4. The sentence on count 2 was stayed and a 365-day sentence on count 3 was deemed served. The total prison term was five years, eight months. The court awarded appellant 468 days of presentence credit and imposed a \$300 restitution fine (§ 1202.4, subd. (b) and a \$300 parole revocation restitution fine (§ 1202.45), which was stayed pending successful completion of parole.

Appellant appealed his convictions and sentence. We modified the judgment to stay the 365-day sentence on count 3 pursuant to section 654. In all other respects, we affirmed. (*People v. Sanchez* (May 31, 2018, B281690) [nonpub. opn.].)

On September 27, 2018, appellant was placed on postrelease community supervision (PRCS), subject to various terms and conditions. He served a 10-day flash incarceration on December 6, 2018. On February 20, 2019, the Ventura County Probation Agency filed a petition to revoke appellant's PRCS based on alleged supervision violations. The petition alleges that appellant violated PRCS by possessing alcohol, airsoft guns, a bayonet and two samurai swords. He also refused to complete a mandatory behavioral health assessment and to participate in required programs.

At the revocation hearing on April 2, 2019, the probation officer noted that appellant's PRCS performance had improved and recommended that the matter be continued to April 30, 2019 for further monitoring of his supervision. The trial court adopted

that recommendation and denied appellant's motion to terminate PRCS. He appeals that denial.

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant he had 30 days within which to personally submit any contentions or issues he wished us to consider. Appellant responded by filing a two-page typewritten supplemental brief. Attached to the brief is a reporter's transcript of the March 7, 2017 sentencing hearing.²

Appellant contends the sentencing court (a different judge) violated section 1170, subdivision (c) when it imposed his sentence. That subdivision requires the court to "state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451." Appellant argues the sentencing court violated his due process rights by failing to give this advisement and, consequently, he is entitled to release without a period of parole or PRCS.

To the extent appellant has a viable claim, it arose at the sentencing hearing and was not raised in his appeal from the convictions and sentence. In *People v. Senior* (1995) 33 Cal.App.4th 531, the court determined that in the absence of good

² The facts of appellant's 2017 convictions are not relevant to the issues presented by this appeal. Therefore, we have omitted the usual statement of facts.

cause for the delay, the defendant had waived a sentencing issue that could have been raised in a prior appeal. (*Id.* at pp. 533, 538; see *In re Natasha A.* (1996) 42 Cal.App.4th 28, 34 [father appealing from denial of his request for visitation at an 18-month review hearing could not belatedly challenge the validity of the original dispositional order denying visitation, which had been affirmed on appeal].) These authorities stand for the general proposition that an issue that could have been, but was not, raised by appeal cannot be challenged in a subsequent appeal.

Even if appellant's claim had been preserved, it is meritless. Courts have held that a trial court's "procedural oversight" in failing to advise of a possible parole or PRCS term under section 1170, subdivision (c) is not subject to relief "without analysis as to whether the defendant was harmed by the error." (*People v. McMillion* (1992) 2 Cal.App.4th 1363, 1370 (*McMillion*)). In cases involving a guilty plea, the failure to advise the defendant of the possibility of a parole or PRCS term is harmless unless it is reasonably probable the defendant would have entered a different plea had he or she been properly advised. (*Ibid.*; see *In re Chambliss* (1981) 119 Cal.App.3d 199, 201, 203 [rejecting the defendant's argument that because he was not advised of the possibility of a parole term, his plea bargain should be construed as requiring parole-free release].)

Here, the record demonstrates that appellant was not harmed by the omitted advisement of a possible parole or PRCS term. (See *McMillion, supra*, 2 Cal.App.4th at p. 1370.) Because appellant was convicted following a jury trial, there is no issue about the potential right to withdraw a guilty plea. (See *ibid.*) Moreover, the sentencing court was "not empowered to impose a prison sentence without parole" and had "no such discretion" to

decide “whether a parole period shall be served nor to proscribe its duration; that is the province of the Board of Prison Terms.” (*Id.* at pp. 1368-1369; see § 3000, subd. (a)(1).) Finally, given that the court found true the three prior prison term allegations, we can reasonably assume appellant knew he might be facing the possibility of parole or PRCS following his release from prison. (See *McMillion*, at p. 1370.)

We have examined the entire record to determine if there is any arguable issues arising from the trial court’s denial of appellant’s motion to terminate PRCS. We are satisfied that appellant’s counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The order denying the motion to terminate PRCS is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Patricia M. Murphy, Judge
Superior Court County of Ventura

Wayne C. Tobin, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.