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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

VALERIE RODRIGUEZ,

Defendant and Appellant.

B280168

(Los Angeles County
Super. Ct. No. BA436120)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen A. Marcus, Judge. Affirmed.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Valerie Rodriguez appeals from the judgment entered following her negotiated pleas of no contest to multiple counts of first degree residential burglary (Pen. Code, § 459)¹ arising from a series of burglaries committed throughout Los Angeles County from October 2014 through February 2015. Rodriguez was sentenced to an aggregate state prison term of 12 years. On appeal, Rodriguez contends there was sentencing error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Burglaries and Informations

According to the probation report, in 2014 and 2015 police officers investigated multiple home burglaries that took place in Los Angeles County. In 2015 police matched Rodriguez's fingerprints with those found at the scene of the burglaries. Rodriguez was arrested and charged in three separate informations filed in Los Angeles Superior Court case Nos. GA095906, BA436120, and GA097534. The informations alleged multiple counts of first degree residential burglary (§ 459) and attempted first degree residential burglary (§§ 459, 664). The People also alleged that Rodriguez suffered convictions of prior felonies for which she served separate prison terms within the meaning of section 667.5, subdivision (b).

¹ All further statutory references are to the Penal Code.

B. *The Negotiated Pleas*

1. *Case No. GA095906*

On February 18, 2016 Rodriguez entered a negotiated no contest plea to one count of first degree burglary. She admitted the special allegation that another person, other than an accomplice, was present during the commission of the burglary, making the burglary a violent felony within the meaning of section 667.5, subdivision (c). Rodriguez also admitted the special allegation that she had served two separate prison terms for prior felony convictions (§ 667.5, subd. (b)), and agreed to pay victim restitution.

The court indicated it would sentence Rodriguez to a two-year sentence on the burglary count, plus one year for the prison prior, for a three-year aggregate sentence.

2. *Case No. BA436120*

On April 19, 2016 Rodriguez entered a negotiated plea of no contest to four counts of first degree residential burglary, and admitted two prior prison term allegations (§ 667.5, subd. (b)). Rodriguez agreed, as a condition of the plea, to pay restitution on the remaining six counts of first degree burglary and two counts of attempted first degree burglary, which were to be dismissed at the time of sentencing, and for the burglary charges in two cases the district attorney's office had not yet filed. (§ 1192.3; *People v. Harvey* (1979) 25 Cal.3d 754.)

The court indicated that as part of the negotiated plea, Rodriguez would be sentenced to an aggregate term of 12 years in state prison.

3. *Case No. GA097534*

On September 19, 2016 Rodriguez entered a negotiated plea of no contest to one count of first degree burglary, admitted three prior prison term allegations (§ 667.5, subd. (b)), and agreed to pay victim restitution.² The People indicated they intended to request that Rodriguez be sentenced on this case consecutive to the time she was to be sentenced in the other two cases, although no indicated sentence was stated on the record.

4. *Waiver of Constitutional Rights*

Prior to taking Rodriguez's pleas, each trial court advised Rodriguez of her constitutional rights and the nature and consequences of the plea, which she stated she understood. Rodriguez's attorneys joined in the waivers of Rodriguez's constitutional rights. The trial courts expressly found Rodriguez's waivers, pleas, and admissions were voluntary, knowing, and intelligent.

At the conclusion of the plea hearings, Rodriguez waived time for sentencing so that she could be sentenced in all three cases. The cases were consolidated for sentencing under case No. BA436120.

C. *The Sentencing Hearing*

On November 3, 2016 Rodriguez appeared for sentencing in all three cases. Rodriguez orally stated her intent to withdraw

² The information in case number GA097534 alleged Rodriguez had served three separate prior prison terms within the meaning of section 667.5, subdivision (b); the other two informations alleged that Rodriguez had served two prior prison terms.

her plea, arguing she was unaware that by pleading to a violent felony (burglary with a person present) in case No. GA095906, this would affect her aggregate sentence in all three cases in that she would not be eligible to receive 50 percent conduct credits. Instead, she would have to serve a minimum of 85 percent of her sentence on the three cases.

The trial court reviewed the transcripts of the pre-plea and plea hearings and, after defense counsel formally made a motion to withdraw the plea, the court denied the motion. The court explained, “There are no grounds. She was clearly informed. . . . [T]he motion to withdraw the plea is denied. There is not sufficient evidence to have her withdraw her plea. She was told about the fact that this would be an 85-percent good-time/work-time credit-situation.”³

The trial court then sentenced Rodriguez on the three cases:

1. *Case No. BA436120*

The trial court sentenced Rodriguez to an aggregate state prison term of 12 years. On count 1 for first degree residential burglary, the court imposed the upper term of six years as the base term. On the three additional counts of residential burglary (counts 2, 3, and 4), the court imposed consecutive terms of 16

³ At the April 12, 2016 hearing, Rodriguez stated, “But I’m looking at 12 [years, which the People offered in case No. BA436120] with 85 [percent] instead of 12 [years] with half, because I have 85 charge—” and Judge Marcus responded, “That’s the way it goes.” On April 14, 2016 Judge Marcus again advised Rodriguez that she would not be entitled to 50 percent conduct credit: “No. It will be 12 [years], with the fact you’re getting 85 percent, they’ll all be 85 percent.”

months on each count, calculated at one-third the middle term of four years. In addition, the court imposed a one-year sentence enhancement for each of the two admitted prison priors.

2. *Case No. GA095906*

The trial court sentenced Rodriguez on the single count for first degree burglary, person present (the violent felony) to the lower term of two years in state prison to be served concurrently with the sentence imposed in case No. BA436120.⁴

3. *Case No. GA097534*

The court sentenced Rodriguez on one count of first degree burglary to an aggregate state prison term of five years, consisting of the middle term of four years plus one year for one of the prior prison term enhancements, to be served concurrently with the sentence imposed in case No. BA436120.

4. *Aggregate Sentence*

The court sentenced Rodriguez to an aggregate sentence of 12 years in state prison. In each case the trial court imposed statutory fines, fees, and assessments, and awarded Rodriguez 745 days presentence custody credits, including 647 days actual days plus 98 days of good time/work time credit (at 15 percent).⁵ The court dismissed the remaining counts and allegations.

⁴ The court did not impose the one year prison prior sentence enhancement that was part of the trial court's indicated three-year sentence made at the time of the plea.

⁵ The court inadvertently rounded up the conduct credit to 98 days.

Rodriguez filed a timely notice of appeal and request for a certificate of probable cause. In her notice of appeal, Rodriguez checked the preprinted box stating her “appeal [was] based on the sentence or other matters occurring after the plea that [did] not affect the validity of the plea.” Rodriguez’s request for a certificate of probable cause was denied.

DISCUSSION

We appointed counsel to represent Rodriguez on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On January 23, 2018 we advised Rodriguez she had 30 days within which to submit any contentions or issues she wished us to consider. We have received no response.

In her request for a certificate of probable cause, Rodriguez stated she wanted to have her “sentencing reevaluated,” contending that she was entitled to receive 50 percent rather than 15 percent conduct credits on her sentence. A defendant who appeals following a plea of no contest or guilty without 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 its validity. (Cal. Rules of Court, rule 8.304(b).) Accordingly, to the extent Rodriguez contests the validity of her negotiated sentence imposed as a result of her plea to the court, she is, in substance, attacking the validity of her plea, and her notice of appeal on that basis is inoperative. (§ 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

Here, however, although the trial court advised Rodriguez that she would receive only 15 percent instead of 50 percent conduct credits, that was not part of the negotiated plea. Thus, to the extent Rodriguez contends the trial court imposed an unauthorized sentence by incorrectly interpreting the statutory limitations on custody credits, that issue may be raised on appeal without a certificate of probable cause. (See *People v. Buttram* (2003) 30 Cal.4th 773, 783 [defendant could challenge trial court's exercise of sentencing discretion without certificate of probable cause where the plea agreement was to a maximum sentence]; *People v. Hodges* (2009) 174 Cal.App.4th 1096, 1102 & fn. 5 ["Presentence custody credit issues do not require a certificate of probable cause"].)

As the Supreme Court concluded in *Buttram*, "while *unauthorized* sentences may generally be challenged on appeal even if there were no objections below, '[w]here the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. . . . [Citations.]' [Citation.]" (*People v. Buttram, supra*, 30 Cal.4th at p. 783.)

Because Rodriguez did not enter a plea for a specific sentence as to her custody credits, we consider whether she was entitled to 50 percent custody credits for the portion of her sentence imposed for nonviolent crimes. We conclude as to Rodriguez's presentence credits, she was not. Section 2933.1, subdivision (c), provides that a defendant convicted of a violent felony is entitled to good time/work time custody credits of 15 percent of the defendant's actual custody time. The courts have consistently interpreted this provision to limit the presentence

custody credits for a defendant who is sentenced to multiple crimes at the same time, including nonviolent felonies, to the 15 percent limitation. (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1184 [“Because, by its terms, [§] 2933.1 applies to the offender rather than the offense, the statute limits a violent felon’s conduct credits for all counts of conviction, regardless of whether every count falls under [§] 667.5”]; see also *In re Reeves* (2005) 35 Cal.4th 765, 774 [“Thus, a person who spends time in presentence (including pretrial) confinement and is eventually convicted of a violent offense may earn, as a credit against his prison sentence, no more than 15 percent of the actual time he spent in presentence confinement, regardless of the offenses for which he was charged”].)⁶

We have examined the record with respect to potential other sentencing or post-plea issues that do not challenge the

⁶ With respect to the credits Rodriguez will accrue while serving her 12-year sentence, these will be calculated by the Department of Corrections and Rehabilitation. It appears that as to these credits Rodriguez would be entitled to up to 50 percent custody credit on the concurrent terms imposed for the nonviolent crimes charged in case Nos. BA436120 and GA097534; the 15 percent custody credit limitation in section 2933.1, subdivision (a), will apply to Rodriguez’s sentence on the violent felony for which she was sentenced to two years in state prison in case No. GA095906. (*In re Reeves, supra*, 35 Cal.4th at p. 769 [with respect to a concurrent term for a nonviolent offense, “once [the defendant] completed the term for the violent offense he became prospectively eligible to earn credit at a rate unrestricted by the section”].) Therefore, once Rodriguez completes her two-year concurrent sentence in case No. GA095906 at the credit accrual rate of 15 percent, she will serve the remainder of her concurrent sentence at the rate of 50 percent. (See *Id.* at p. 780.)

validity of the plea and are satisfied Rodriguez's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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