

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY BLAIR,

Defendant and Appellant.

B267100

(Los Angeles County
Super. Ct. No. SA084796)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Mark E. Windham, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the
Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle and David A. Wildman, Deputy
Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant pled no contest to two counts of failing to register as a sex offender. On appeal he argues that the registration requirements are unconstitutional as applied to him, and that the trial court should have stayed his sentence as to one count. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying facts

In 1997, defendant was convicted of crimes that required him to register as a sex offender. In an information dated January 31, 2014, the District Attorney of the County of Los Angeles (the People) filed an information charging defendant with failing to file a change of address (Penal Code, § 290.013, subd. (a),¹ count 1) and failing to update his registration annually (§ 290.012, subd. (a), count 2). The People also alleged three prior strike convictions (§§ 667, subd. (d), 1170.12, subd. (b)) and six prior prison terms (§ 667.5, subd. (b)).

At the preliminary hearing, Hawthorne police officer Matthew Lucero testified that he manages sex offender registrations in the city of Hawthorne. From time to time, officers do compliance checks throughout the city to ensure sex offenders are registered as required. Lucero was present when defendant filled out an annual update sex offender registration form on August 10, 2012. Lucero told defendant there were 20 registration requirements, and that defendant was responsible for complying with each of those requirements. Defendant initialed each of them, including number 4, which stated, “I must annually update my registration information in person within

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

five working days before or after my birthday,” and numbers 5 and 6, which required registration of a new address within five days of moving. Defendant signed the registration form, and provided a thumbprint on the form.

Lucero testified that he was also present when defendant filled out a form to update his address on November 28, 2012. Again Lucero told defendant that he had to comply with registration requirements, and defendant initialed the requirements. Defendant signed the form and provided a thumbprint.

On June 8, 2013, Lucero went to defendant’s listed address and found that the property was vacant. He called defendant at the phone number defendant provided, and defendant told Lucero that he had moved but he had not yet registered a new address because he was “still in the process of trying to find a location.” Lucero told defendant to come to the police station on June 11 to register, but defendant did not show up that day. Lucero called defendant again, but he was not able to reach him. Lucero checked the California Sex and Arson Registry, and found that defendant had not registered with any law enforcement agency in the state. Defendant also did not update his registration on his birthday in July. At the time of the preliminary hearing on January 16, 2014, defendant had not registered since November 2012. Lucero testified that defendant never reported being homeless.

Contrary to his counsel’s advice, defendant testified at the preliminary hearing. He said he did not know whether he was required to register.² He also testified, “I’ve been harassed and

² It appears that defendant was previously convicted of failing to register, and made similar arguments about not

the police officers have come to my office stalking me, broken into my office, hacked my computers, threatened me, set prostitutes around to try to get me into some type of criminal activity, as well as personally threatened me.”

B. Proceedings below

On March 26, 2014, the court found that defendant was not competent to stand trial due to a mental disorder that prohibited him from cooperating with counsel. The court ordered defendant to be transported to Patton State Hospital. The record indicates that after several delays and additional court orders, defendant was admitted to the hospital on August 4, 2014. On October 24, 2014, defendant appeared in court, and based on a report from the hospital, the court found defendant competent.

Defendant then moved to represent himself; the court deferred ruling out of concern that defendant might not be competent to represent himself. The court ordered Jack Rothberg, M.D., to examine defendant. On December 12, 2014, Dr. Rothberg testified about his examination of defendant. He said defendant “has what appear to be many delusional paranoid ideas that revolve around his current predicament. He has very distorted ideas about his current circumstances, the law, what his options are. . . . They seem to have a psychotic component to them and really not amenable to reasoning. So I think there is a

knowing whether he was required to register. According to *People v. Blair* (July 21, 2009, B200492 [nonpub opn.]), defendant, under the name Bill Wayne Blair, Jr., was arrested for failing to register as a sex offender in 2004 but was not charged. In 2006, defendant’s probation was revoked for failing to register, and he was convicted of that offense. Division Three rejected defendant’s argument that he was unsure whether he was supposed to register.

paranoid psychosis, I believe.” Dr. Rothberg also said that defendant “has paranoid ideas about the public defender’s office believing they are conspiring against him for no reason that I could discern.” Dr. Rothberg opined that defendant could not adequately represent himself, because his desire to do so was “based on delusional thinking because it extends beyond the particulars of his current predicament.” The court found defendant incompetent to represent himself, and suspended proceedings to allow for further assessment of defendant. Three days later, on December 15, 2014, after further discussions with counsel on both sides, the court found that Dr. Rothberg’s prior testimony was insufficient to overcome the presumption of competency, and resumed proceedings.

On January 29, 2015, defendant filed a non-statutory motion to dismiss. In it, defendant argued that at the time of his 1997 conviction, the judge presiding over the trial did not order defendant to register as a sex offender. Defendant also argued that prison officials failed to advise him about a duty to register. The motion stated, “It is defendant’s contention that in the absence of a judicial order that he register, local authorities overstep their powers in requiring him to do so and thereby tread on the authority vested in the judicial branch.”

On April 30, 2015, defendant filed a second non-statutory motion to dismiss. In this motion, defendant asked the court to order that “the prosecution of Billy Blair, a homeless man who suffers from well documented grandiose and paranoid delusions, for a felony punishable with state prison as a result of a failure to register every thirty days with law enforcement, is a violation of the 5th, 8th, and 14th amendments to the United States Constitutions and Article 1, Sections 7 and 17 of the California

Constitution.”³ A declaration in support of the motion was provided by Robert M. Conley, counsel for defendant. In it, Conley opined, “[M]y twenty five years of criminal practice convince me that any ordinary homeless person, even if well-intentioned, would have great difficulty registering consistently every thirty days for many consecutive months.” The motion and declaration were accompanied by a memorandum of points and authorities.

At a hearing on May 6, 2015, defense counsel argued that it was undisputed that defendant had mental health issues, and therefore “I have no doubt that he would meet the requirements of the Americans with Disabilities Act.” “[T]o say a homeless person who also, I believe, [is] mentally disabled, that you will register every 30 days. And in some situations, you will register every five days is just an unreasonable assumption of my client’s and in effect, discriminating against the disabled person.”⁴ Counsel argued that these registration obligations were “completely unreasonable requirements without the assistance of the department of mental health.” If mental health assistance were provided, “you would have some reason to indicate that if

³ Although he did not cite authority for this, defendant was apparently referencing section 290.011 and section 290.012, subdivision (c), which state that persons subject to the sex offender registration requirements who are living as transients must register every 30 days. As discussed below, defendant was not charged with or convicted of failing to comply with any 30-day requirements.

⁴ Defendant may have been referring to section 290.011, subdivision (b), which requires a transient who moves to a residence to register at that address within five days. However, defendant was not charged with violating this statute.

he's not reporting, it's willful somewhat." The stringent reporting requirements, combined with the "absence of mental health assistance is cruel." The court said, "So am I to take your motion to dismiss as a kind of sideways [way] to present mitigation because what you have written is persuasive in terms of mitigation. I will grant you the persuasive quality of what you have written. To me, it doesn't really seem to justify dismissing the people's case."

On July 23, 2015, defendant filed a "supplemental non-statutory motion to dismiss." Defendant asked the court to "dismiss the information due to the failure of the trial court which sentenced Mr. Blair on his assault to commit rape charge to advise Mr. Blair that he would be required to register as a sexual offender. Such an omission was a non-curable violation of Penal Code Section 1193 and the Sixth Amendment of the Constitution guaranteeing defendants the right to be present at all stages of the criminal proceedings and for their attorney to assist them at all critical phases." At a hearing the same day, the court denied the motion, stating, "He may feel that he has a technical defense that absolves him of that responsibility [to register]. It's not a basis to dismiss a case. So the motion is denied." However, the court said, "I always thought there's quite a bit of mitigation in this dismissal motion, and I'm going to treat it as a *Romero*."⁵ The court ordered a continuance to allow the People to respond to the *Romero* motion.

At the next hearing, on August 11, 2015, defendant pled no contest to counts 1 and 2. Defense counsel said, "[T]he plea is entered pursuant to People versus West and North Carolina versus Alford because of the reasons that have been set forth

⁵ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

regarding my client’s understanding of the original trial court’s order as being overarching.” Defendant admitted his prior convictions, but asserted that they were not constitutional. The court granted defendant’s *Romero* motion and struck the three prior strike convictions. The court also struck the section 667.5, subdivision (b) enhancements.

The court sentenced defendant to the upper term of three years on count 1, and the upper term of three years on count 2, to run concurrently. Defendant received custody credits of 1,186 days, which exceeded the sentence, and therefore he was essentially sentenced to time served. The court said, “I’m going to issue a certificate of probable cause upon application. There are legal issues that I ruled upon which are worthy of appeal.”

Defendant filed a request for a certificate of probable cause restating the bases for his two motions to dismiss—that the 30-day registry requirement for transient sex offenders is unconstitutional, and that defendant was never told by a court that he was required to register. The court granted the request. Defendant timely appealed.

DISCUSSION

A. Defendant’s constitutional challenge to the registration requirements

Defendant argues that “the trial court erred in denying appellant’s motion to dismiss the charges since the mandatory registration requirement was unconstitutional as applied to him.” The Attorney General argues that because he pled no contest, defendant has forfeited this appellate argument.

A guilty or no contest plea admits every element of the crime. (*People v. French* (2008) 43 Cal.4th 36, 49; *People v. Hoffard* (1995) 10 Cal.4th 1170, 1177.) Generally, a “person who

pleads guilty to a criminal offense cannot thereafter raise issues relating to his guilt or to the procedures which would otherwise be required to establish his guilt. He may only raise issues which, if true, would preclude the state from prosecuting him despite his guilt.” (*People v. Turner* (1985) 171 Cal.App.3d 116, 126-127.) However, where a defendant moves to dismiss for reasons that do not question whether defendant was innocent of the charges—in other words, where defendant “merely objects to the right of the state to try him for those offenses”—that is an appealable “matter going to the legality of the proceedings.” (*Id.* at p. 128.) Defendant’s as-applied constitutional challenge arguably falls under the category of “the right of the state to try [defendant] for those offenses.” We therefore consider defendant’s constitutional challenge to the statutes at issue.

“When reviewing an as-applied constitutional challenge on appeal, we defer to the trial court’s findings on historical facts that are supported by substantial evidence, and then independently review the constitutionality of the statute under those facts.” (*People v. Mitchell* (2012) 209 Cal.App.4th 1364, 1378.) Defendant does not dispute that he failed to complete his annual registration near his birthday as required by section 290.012, subdivision (a), or that he failed to inform authorities when he moved away from his previous residence, as required by section 290.013, subdivision (a)—the two statutes defendant was convicted of violating. The facts underlying defendant’s convictions are therefore not in dispute.

Defendant’s primary argument is that the registration requirements are unconstitutional as applied to him because he “should have been provided with help to assist him in registering because as a homeless person he was required to register every

30 days.” Defendant also argues that a “transient with mental problems being required to register every 30 days . . . is unconstitutionally cruel, harsh, and it’s simply untenable because these are the very types of issues that people who are insane have great difficulty with remaining clear minded to do something on a repeated basis.” Defendant asserts that it is clear from the proceedings below that he has mental health issues that could have interfered with his ability to register.

However, defendant was not convicted under section 290.011 or 290.012, subdivision (c), which require a person living as a transient in California to update his or her registration at least every 30 days. Defendant pled no contest to failing to register annually (§ 290.012, subd. (a)) and failing to inform authorities when he left his previously registered residence address (§ 290.013, subd. (a).) Whether the 30-day registration requirements contained in other statutes could be unconstitutional as applied to a mentally ill, transient person, therefore, is not at issue in this case. “Whether the particular application of a statute declaring conduct criminal is constitutionally permissible can be determined only after the circumstances of its application have been established by conviction or otherwise. [Citation.] Only then is an as applied challenge ripe.” (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1085.) Any as-applied constitutional challenge to the 30-day requirement is not ripe in this case.

Defendant also argues that his counsel below “analogized the constitutionality of the registration requirement imposed upon appellant to . . . residency restrictions of section 3003.5, subdivision (b),” which were held to be “arbitrary and oppressive, violating due process under the Fourteenth Amendment.”

However, such residency restrictions are not analogous to the registration requirements at issue here. As discussed in *In re Taylor* (2015) 60 Cal.4th 1019, a habeas corpus case arising in San Diego County, section 3003.5, subdivision (b) barred registered sex offenders on parole from residing “within 2000 feet of any public or private school, or park where children regularly gather.” (*Taylor, supra*, 60 Cal.4th at p. 1023.) Evidence presented in the trial court showed that the restrictions rendered a significant portion of available housing in San Diego County off-limits to sex offender parolees. (*Id.* at pp. 1029-1030.) The Supreme Court held that the residency restrictions were unconstitutional as applied to those parolees in San Diego County because they increased homelessness, hindered the parolees’ ability to access needed social services, and hampered law enforcement’s ability to monitor and rehabilitate the parolees. (*Id.* at p. 1023.) Here, defendant has not demonstrated that the requirements had an oppressive effect on his basic liberty interests, as the residency requirements had on parolees in *Taylor*. Moreover, “lifetime registration requirements imposed by [former] Penal Code section 290 . . . do not involve the loss of liberty.” (*People v. McKee* (2010) 47 Cal.4th 1172, 1211, fn.4.)

Defendant also argues that the “mandatory sex registration requirement under sections 290.012 and 290.013, as applied to appellant, violates appellant’s due process rights to be free from arbitrary and oppressive official enforcement action.” Defendant cites *People v. North* (2003) 112 Cal.App.4th 621, but this case does not support his position. In *North*, a transient sex offender argued that registration obligations requiring him to inform authorities every time he changed “location” were too vague to allow compliance, and therefore violated his due process rights.

The Court of Appeal agreed: “The provisions of section 290, subdivisions (a)(1)(A) and (f)(1) requiring reregistration and written notification upon a change of ‘location’ are void for vagueness, as is the subdivision (a)(1)(B) requirement that a transient offender specify all the places where he is regularly located within a jurisdiction.” (*Id.* at p. 634.)

Here, defendant does not contend that the requirements were vague, as were the requirements in *North*, nor does he advance any other arguments that the registration requirements relevant to his conviction were arbitrary or oppressive. “When a criminal defendant claims that a facially valid statute or ordinance has been applied in a constitutionally impermissible manner to the defendant, the court evaluates the propriety of the application on a case-by-case basis to determine whether to relieve the defendant of the sanction.” (*Tobe v. City of Santa Ana*, *supra*, 9 Cal.4th at p. 1084.) Defendant has not demonstrated that the restrictions in 290.012, subdivision (a), or section 290.013, subdivision (a) are unconstitutional as applied to him.

B. Defendant may not withdraw his plea

In the alternative, defendant argues that if we find he waived the appellate challenge to his conviction, we should allow him to withdraw his plea, either because the plea was induced by a false understanding that he could appeal the issues in his motions to dismiss, or because it was entered as a result of ineffective assistance of counsel. We have addressed defendant’s constitutional challenges, so there is no need to address these alternative arguments.

C. Sentencing

Defendant also argues that the trial court erred by imposing concurrent terms for his convictions, rather than staying the sentence as to count 1. Defendant argues that these concurrent sentences constituted multiple punishments for the same omission, and are therefore barred by section 654.⁶

Defendant was convicted of two separate omissions: One failure to register a change of address (count 1), and one failure to update his registration annually (count 2). Similarly, in *People v. Meeks* (2004) 123 Cal.App.4th 695 (*Meeks*), the defendant was convicted of failing to register within five days after changing his address and failing to register within five days of his birthday. (*Meeks, supra*, 123 Cal.App.4th at pp. 699-700.) The court held that separate sentences were appropriate: “Under section 290, a failure to register when one moves to a different residence is a continuing offense; a failure to register on the event of the defendant’s birthday is a separate continuing offense.” (*Id.* p. 703.) These are “multiple convictions for multiple criminal acts” (*ibid.*), and under section 654, concurrent sentences are appropriate. (*Id.* at pp. 705-706.)

Defendant compares his convictions to those in *People v. Britt* (2004) 32 Cal.4th 944 and *People v. Villegas* (2012) 205 Cal.App.4th 642. In both of those cases, the defendants failed to register with the proper authorities when they moved. Both defendants were convicted of violating two requirements:

⁶ “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654, subd. (a).)

informing law enforcement when they left their former residences, and informing law enforcement of their new addresses. The Court in *Britt* stated, “[A] person subject to section 290’s reporting requirements who changes residence a single time within California without reporting to any law enforcement agency, and who thus violates both subdivisions (a) and (f) of section 290, may be punished for one of those crimes, but not both.” (*Britt, supra*, 32 Cal.4th at pp. 953-954.) The court in *Villegas* agreed, and followed *Britt* in finding that the court correctly stayed the sentence on the defendant’s conviction of section 290.013, subdivision (b).

Here, defendant was not convicted of violating two statutes or subdivisions with a single move, as in *Britt* and *Villegas*. Instead, count 1 was based on failing to file a change of address in June 2013, and count 2 was based on failing to register annually near defendant’s birthday in July 2013. This case is more similar to *Meeks*, and concurrent sentences were not barred by section 654 because they were based on separate actions constituting discrete violations of the registration requirements.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.