

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

STEVE RAY BRUMFIELD,

Defendant and Appellant.

B276740

(Los Angeles County
Super. Ct. No. NA101061)

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

Eileen Manning-Villar, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Steve Ray Brumfield appeals from the judgment and sentence imposed after he admitted violating the terms of his probation. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable appellate issues exist. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On December 12, 2014, Long Beach police officers observed defendant making a sale of cocaine base to a confidential informant. Defendant was arrested the next day, taken to jail, and searched during booking. Two packaged pieces of rock cocaine were found in his socks. An information filed February 20, 2015 charged defendant with offering to sell cocaine base (Health & Saf. Code, § 11352; count one) and bringing an illegal substance into a jail (Pen. Code, § 4573.5; count two).¹ The information further alleged defendant had suffered three prior felony narcotics convictions and had served eight prior prison terms (Health & Saf. Code, § 11370.2; § 667.5, subd. (b)).

Defendant entered a plea of no contest on March 27, 2015, and was referred to the Los Angeles County Sentenced Offender Drug Court (SODC) program. Defendant was conditionally released to an outpatient residential drug treatment program under the court's supervision. On June 25, 2015, the court placed defendant on five years of formal probation and imposed several conditions, including that he successfully complete the treatment program and obey all rules, regulations, and orders of the probation department, treatment program, and the court.

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

Defendant violated the terms of his probation on three separate occasions. On September 15, 2015, the court revoked defendant's probation after the treatment program alleged he had tested positive for cocaine and had abandoned treatment. The court reinstated probation and released defendant to the program on October 29, 2015 after he admitted the violation. The court revoked probation a second time on December 21, 2015 after being notified that defendant had been arrested and charged with a new offense. At a hearing on March 2, 2016, the court learned defendant had been arrested in Long Beach and had pleaded guilty to misdemeanor possession of a controlled substance (Health & Saf. Code, § 11350.) The court reinstated probation and released defendant to the treatment program, but ordered him to "stay out of Long Beach."

On May 4, 2016, the court revoked probation a third time after receiving a report from the treatment program alleging defendant violated the court's order to stay out of Long Beach and recommending that he be terminated from SODC for lack of program response. On May 25, 2016, defendant waived his right to a formal hearing and admitted the probation violation. Defendant explained that he went to Long Beach because his wife was having a nervous breakdown. The court reminded defendant that he was specifically ordered to stay out of Long Beach, and defendant acknowledged that he understood the order.

The court terminated defendant's probation and sentenced him to a seven-year term in county jail. On count one, the court selected the low term of three years, plus an additional three years for the allegation pursuant to Health & Safety Code section 11370.2, subdivision (a) and an additional one year for a prior prison conviction (§ 667.5, subd. (b)), all to be served

consecutively. On count two, the court imposed the low term of 16 months to be served concurrently with count one. Defendant was ordered to pay various fines and fees and awarded 44 days of custody credit.

On July 21, 2016, defendant wrote a hand-written letter to the court claiming ineffective assistance of counsel and requesting a sentence modification. The court determined that defendant's letter should be treated as a timely appeal of his judgment and sentence, and forwarded it to the superior court's appellate department. No certificate of probable cause was issued.

DISCUSSION

Defendant's court-appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of his right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief in which he argues: (1) he did not receive adequate notice that traveling to Long Beach would violate the terms of his probation; (2) his public defender was ineffective in advising him to admit the violation, and he would have demanded a formal revocation hearing; (3) he never admitted violating his probation because he was unaware of any violation that he may have committed; and (4) he is entitled under Proposition 57 to have all of his prison priors and enhancements removed from his sentence.

After independently examining the entire record, we agree there are no arguable appellate issues. The scope of our review is

strictly limited because defendant did not comply with the certificate requirements of section 1237.5.

Section 1237.5 provides that “[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, *or a revocation of probation following an admission of violation*, 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.” (Italics added.)

“Notwithstanding the broad language of section 1237.5, it is settled that two types of issues may be raised in a guilty or nolo contendere plea appeal without issuance of a certificate: (1) search and seizure issues for which an appeal is provided under section 1538.5, subdivision (m); and (2) issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed. [Citations.]” (*People v. Panizzon* (1996) 13 Cal.4th 68, 74-75; see Cal. Rules of Court, rule 8.304(b).)² However, “[i]t has long been established that issues going to the validity of a plea require compliance with section 1237.5. [Citation.]” (*Panizzon*,

² California Rules of Court, rule 8.304(b)(4) incorporates these two exceptions by allowing a defendant to appeal from a judgment following the entry of a plea of guilty or no contest without a certificate of probable cause “if the notice of appeal states that the appeal is based on: [¶] (A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or [¶] (B) Grounds that arose after entry of the plea and do not affect the plea’s validity.”

at p. 76.) “In determining whether section 1237.5 applies to a challenge of a sentence imposed after a plea of guilty or no contest, courts must look to the substance of the appeal . . . the critical inquiry is whether a challenge to the sentence is in substance a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5. [Citation.]” (*Ibid.*, italics omitted, accord *People v. Buttram* (2003) 30 Cal.4th 773, 781-782.)

In *People v. Billetts* (1979) 89 Cal.App.3d 302 (*Billetts*), the court applied these principles to a defendant’s appeal from a probation revocation following his admission of the violation. (*Id.* at pp. 306-308; accord *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1428, fn. 5.) In *Billetts*, the defendant claimed, in part, that he was “deprived of proper notice of prerevocation hearing, deprived of the hearing itself, and not informed of the consequences of an admission of violation.” (*Billetts*, at p. 308.) The court held that these issues concerned the validity of his admission and were not reviewable on appeal absent a certificate of probable cause. (*Ibid.*) It further held the defendant’s other claims relating to the legality of his sentence—that the sentence imposed was cruel and unusual and also invalid because the court did not pronounce judgment—were cognizable without a certificate. (*Ibid.*)

Our Supreme Court advises that the requirements of section 1237.5 “should be applied in a strict manner.” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098.) Accordingly, because defendant did not obtain a certificate of probable cause, the only grounds cognizable on appeal are those arising after his admission of the probation violation and which do not affect the validity of his admission. (§1237.5; *Billetts*, *supra*, 89 Cal.App.3d

at pp. 306-308.) Defendant's contentions that he lacked notice of the probation condition, was effectively denied a formal revocation hearing, and never admitted to the violation, all directly challenge the validity of his admission and cannot be reviewed without a certificate of probable cause. (*Billetts*, at pp. 306-308.) Defendant's claim that trial counsel rendered ineffective assistance by advising him to admit the violation is similarly unreviewable. (See *People v. Sem* (2014) 229 Cal.App.4th 1176, 1188 [certificate of probable cause was prerequisite to review of defendant's claim that trial counsel was incompetent in advising her to admit probation violations].)

To the extent defendant's claim based on Proposition 57 is cognizable without a certificate of probable cause because it is a postadmission challenge to the legality of his sentence, the law does not provide an avenue for relief in this appeal. Proposition 57, the Public Safety and Rehabilitation Act of 2016, changed parole eligibility rules by adding section 32 to article I of the California Constitution, which provides: "Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense." (Cal. Const., art. I, § 32, subd. (a)(1).) Any determination as to defendant's right to parole under Proposition 57 must be made, in the first instance, by the appropriate agency.

We are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.