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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.

KELVIN CHEUNG,

Defendant and Appellant.

B272190

(Los Angeles County  
Super. Ct. No. GA092646)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Jared D. Moses, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

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## FACTUAL AND PROCEDURAL BACKGROUND

In February 2014 Kelvin Cheung lived with his parents and had access to his father's tax and accounting business. On February 15, 2014 Cheung's father noticed the bottled water at his business had a foul taste. A surveillance video outside the business depicted Cheung leaving through the backdoor carrying a shoulder bag, which his father later found in Cheung's bedroom near a can of insecticide. A chemical analysis of the bottled water revealed the presence of the insecticide.

On March 5, 2014 a fire damaged the father's business. A surveillance video depicted Cheung pouring what looked like gasoline on the back door and igniting it.

The police searched Cheung's car. They found three license plates, at least one of which belonged to a neighbor.

On May 6, 2015 the People charged Cheung with arson of a structure (Pen. Code, § 451, subd. (c)),<sup>1</sup> poisoning or adulterating food or drink (§ 347, subd. (a)), and receiving stolen property (§ 496, subd. (a)). Cheung pleaded not guilty.

On June 23, 2015 Cheung filed a motion to suppress the evidence seized during the search of his car. (§ 1538.5.) At a pretrial conference the same day, the prosecutor informed the court that the officer who would testify at the suppression hearing was currently residing out of state, and the prosecutor needed time to "check in with him." The court advised Cheung that the trial judge presiding over the trial would hear his motion to suppress. Cheung objected, and the court overruled his objection.

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<sup>1</sup> Statutory references are to the Penal Code.

On July 23, 2015 Cheung waived his right to continue representing himself, and the court appointed standby counsel as Cheung's counsel of record. At the request of counsel, the court continued the pretrial hearing. Although at this time Cheung was represented by counsel, Cheung continued to file motions and petitions on his own behalf.

On August 20, 2015, following an ex parte hearing with counsel for Cheung, the trial court declared a doubt as to Cheung's mental competency under section 1368. Over Cheung's objections, the trial court suspended the criminal proceedings and referred Cheung to the Los Angeles County Community Program Director for a written recommendation for treatment and placement. Cheung repeatedly disrupted the proceedings and was removed from the courtroom.

At a hearing on September 4, 2015 the trial court reviewed an evaluation by a licensed psychologist. The court found Cheung was not competent to stand trial under section 1368 and committed Cheung to a state hospital under section 1370. Based on the report and a stipulation by counsel, the court also found Cheung lacked the capacity to make decisions regarding antipsychotic medication, his mental disorder required such medication, and failure to treat with the medication would cause Cheung serious harm to his physical or mental health. The court ordered the doctors to administer the antipsychotic medication involuntarily, if they deemed it medically appropriate, to help Cheung regain competence.

On September 15, 2015 Cheung filed a "motion to inform the court that the defendant is not seeking a finding of mental incompetence." There is no indication the trial court ever ruled on this motion.

On December 29, 2015 Cheung appeared in court with his attorney. After reviewing a psychological assessment by the staff of Patton State Hospital, the court found Cheung competent to stand trial and reinstated the criminal proceedings. Cheung made a motion under *People v. Marsden* (1970) 2 Cal.3d 118 to replace his appointed counsel, which the court denied.

On January 5, 2016 Cheung filed a petition for writ of habeas corpus in this court challenging the trial court's finding of incompetence and the court's order authorizing involuntary administration of the antipsychotic medication. We summarily denied the petition on January 20, 2016. On January 21, 2016 Cheung filed an "amendment to petition for writ of habeas corpus," which this court deemed a separate petition for habeas corpus and summarily denied on January 26, 2016.

On February 29, 2016, after the trial court denied Cheung's request to represent himself again, Cheung pleaded no contest to all charges. Cheung was advised of his constitutional rights, which he waived, and of the consequences of his plea, which he stated he understood. Counsel stipulated to a factual basis for the plea. The court found Cheung knowingly, voluntarily, and intelligently waived his constitutional rights and the court entered his no contest plea.

On March 10, 2016 the trial court sentenced Cheung to an aggregate state prison term of five years, stayed execution of sentence, and placed Cheung on five years of formal probation on condition he complete 180 days of residential mental health treatment, register as an arson offender, and stay away from his parents. The court ordered Cheung to pay statutory fines, fees, and assessments, and awarded him 1,381 days of presentence custody credits.

Cheung filed a timely handwritten notice of appeal stating his appeal was based on the denial of his motion to suppress, challenging the validity of his plea or admission, and claiming “procedural [and] constitutional due process violations, ineffective assistance of counsel, prosecutorial misconduct, [and] judicial bias/prejudice.” The trial court denied Cheung’s request for a certificate of probable cause.

We appointed counsel to represent Cheung on appeal. After reviewing the record, counsel filed a brief raising no issues. We subsequently advised Cheung he had 30 days to file a supplemental brief raising any contentions or issues he wanted us to consider. After denying Cheung’s request to augment the record but granting Cheung several extensions to file his supplemental brief, Cheung filed a 46-page typed supplemental brief arguing his trial counsel provided ineffective assistance, the prosecutor committed misconduct, and the trial judge was biased against him.

## **DISCUSSION**

A criminal 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 issues arising after the entry of the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b)(1) and (b)(4).) Cheung pleaded no contest before the trial judge ruled on the motion to suppress Cheung had filed. To the extent Cheung’s other contentions of an involuntary plea, judicial bias, improper denial of his *Marsden* motion, ineffective assistance of counsel, and prosecutorial misconduct survive his plea, they are not supported by the record.

We are satisfied appellate counsel for Cheung has fully complied with her responsibilities and there are no arguable issues. (*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.

SEGAL, J.

We concur:

PERLUSS, P. J.

SMALL, J.\*

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