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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON McCLAIN,

Defendant and Appellant.

B285735

(Los Angeles County
Super. Ct. No. BA456873)

APPEAL from a judgment of the Superior Court for Los Angeles County, Jose I. Sandoval, Judge. Dismissed.

Jonathan B. Steiner, Executive Director, and Suzan E. Hier, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Jason McClain pled no contest to one count of felony sale of methamphetamine in violation of Health and Safety Code, section 11379, subdivision (a). He also admitted a prior “strike,” and was sentenced to a prison term of six years. Appellant’s appeal must be dismissed due to his failure to obtain a certificate of probable cause under Penal Code section 1237.5, a necessary prerequisite to an appeal following a no contest plea. We therefore dismiss the appeal.

BACKGROUND AND DISCUSSION

On April 29, 2017, appellant spoke with and received money from a confidential police informant. Appellant later returned and gave the informant a piece of paper containing methamphetamine, for which appellant received additional funds.¹

On August 15, 2017, appellant, who was represented by counsel, was advised of and waived his constitutional rights to trial and against self-incrimination, and pled no contest to one count of felony sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a).) He also admitted one prior “strike” conviction. (Pen. Code, §§ 667, 1170.12.)² Before entering a plea, appellant was advised of the consequences and terms of the plea agreement, which provided, among other things, that he would be sentenced to state prison for a middle term of three years,

¹ The facts are drawn from the transcript of the preliminary hearing, a stipulated source of the factual basis for the plea.

² Additional statutory references are to the Penal Code.

doubled to six years.³ Appellant’s attorney joined in the plea, agreed to the waivers and stipulated to a factual basis for the plea. The court found that appellant had knowingly, intelligently and with an understanding of the consequences, relinquished his constitutional rights. The court found the plea was made freely and voluntarily, and found a factual basis for the plea, which was accepted.

Appellant was sentenced to the agreed—upon six years in prison, awarded presentence credits, and ordered to pay certain fees, fines and penalties.

On October 10, 2017, appellant filed a notice of appeal based on “the sentence or other matters occurring after the plea that do not affect the validity of the plea.” Appellant did not obtain a certificate of probable cause. (§ 1237.5.)

After reviewing the record, appellant’s counsel filed a brief requesting that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On March 7, 2018, we advised appellant that he had 30 days within which to submit any arguments or contentions he wished us to consider. To date we have received no response.

Under section 1237.5, a defendant cannot appeal after entering a plea of no contest unless he or she “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

³ It was agreed that appellant’s sentence would run concurrently with his sentences in two other cases.

legality of the proceedings” and the trial court “has executed and filed a certificate of probable cause for such appeal with the clerk of the court.” “The purpose of section 1237.5 is . . . “to discourage and weed out frivolous or vexatious appeals challenging convictions following guilty and nolo contendere pleas,” and . . . [t]he requirements of [the statute] . . . must be strictly applied.” (*People v. Mashburn* (2013) 222 Cal.App.4th 937, 941.)

As pertinent here, in the absence of a certificate of probable cause under section 1237.5, an appeal from a judgment following a no contest plea is limited to review of issues that relate to subsequent hearings determining the degree of the crime or punishment imposed, that do not challenge the validity of the plea. (Cal. Rules of Court, rule 8.304(b)(1), (b)(4)(B); *People v. Johnson* (2009) 47 Cal.4th 668, 677.) Having independently reviewed the record, we find this exception inapplicable here. Accordingly, the appeal is dismissed for failure to obtain a certificate of probable cause.

DISPOSITION

The appeal is dismissed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.