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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIANO PIETRO COSTA,

Defendant and Appellant.

B278760

(Los Angeles County
Super. Ct. No. BA438934)

APPEAL from a judgment of the Superior Court of
Los Angeles County, James R. Brandlin, Judge. Affirmed.

Lenore O. DeVita, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An information filed January 19, 2016, charged appellant Adriano Costa with one count of manufacturing concentrated cannabis in violation of Health and Safety Code section 11379.6, subdivision (a), one count of possession for sale of marijuana in violation of Health and Safety Code section 11359, and one count of child endangerment in violation of Penal Code¹ section 273a, subdivision (a). The information alleged that if appellant were convicted of violating Health and Safety Code section 11379.6, he could “be granted probation only in an unusual case where the interests of justice would best be served.” (§ 1203.073, subd. (b)(3).)

On December 14, 2015, the trial court denied appellant’s motion to quash the search warrant executed on his residence on August 12, 2015. Based on the officers’ observations of appellant’s purchase of a large quantity of butane (48 cans)—commonly used to make concentrated cannabis and highly flammable—while in the company of a man known to have been previously involved in manufacturing concentrated cannabis, the trial court determined there was “a fair probability that contraband would have been found” in appellant’s residence and that there was probable cause for issuing the search warrant. (See *People v. Luera* (2001) 86 Cal.App.4th 513, 525 [court looks at totality of circumstances presented to the magistrate to assess probability].)

Following the trial court’s ruling on the motion to quash, the preliminary hearing in this matter began. Detective Eliana Tapia testified about the execution of the search warrant at appellant’s residence. There, police officers discovered the equipment necessary to manufacture cannabis concentrate, including two

¹ Further undesignated statutory references are to the Penal Code.

tubes filled with marijuana plant pieces and empty butane canisters, and discovered recently manufactured cannabis concentrate. They observed a child's chair near butane cans and other items used to make concentrated cannabis. On the seat of that child's chair were items for making concentrated cannabis as well. On August 13, 2015, Officer Anna Marie Schube interviewed appellant's six-year-old daughter who was not home on the day the warrant was executed. The daughter described seeing a substance that matched the description of concentrated cannabis on top of the refrigerator in the residence.

At the conclusion of the preliminary hearing, the court held appellant to answer on the two marijuana charges and the child endangerment charge, denied appellant's motion to reduce the child endangerment charge to a misdemeanor, and granted appellant's motion to dismiss two counts of failure to care for an animal (§ 597.1).

On March 23, 2016, the trial court heard and denied appellant's motion to traverse the warrant based on facts allegedly omitted from Detective Tapia's affidavit about conducting internet research to reach the conclusions outlined in her supporting affidavit, and motion to suppress the evidence obtained from the warrant pursuant to section 1538.5. (See *People v. Luera, supra*, 86 Cal.App.4th at p. 525 [trial court should deny motion to traverse if it concludes search warrant affidavit was not materially false].) The court also heard and denied appellant's motion to dismiss the information pursuant to section 995 on the ground the evidence was insufficient to show probable cause the crimes had been committed. In addition, the court denied appellant's motion to continue the trial.

On May 19, 2016, appellant entered an open plea to all three charges against him. On August 22, 2016, the trial court found this was not an unusual case in which justice would be served by a grant of probation. The court sentenced appellant to a total of five years in state prison, consisting of the midterm of five years for the Health and Safety Code section 11379.6, subdivision (a) manufacturing conviction, plus a concurrent term of two years for the Health and Safety Code section 11359 possession for sale conviction, and a concurrent term of four years for the section 273a child endangerment conviction.

On October 19, 2016, appellant filed a timely notice of appeal. The trial court denied his request for a certificate of probable cause.

In a letter dated November 11, 2016, the California Department of Corrections and Rehabilitation (CDCR) sent a letter identifying a potential error in appellant's sentence. The letter stated that because the CDCR had identified a potentially illegal sentence, the trial court was entitled to reconsider all sentencing choices. (*People v. Hill* (1986) 185 Cal.App.3d 831, 834.) On February 16, 2017, while this appeal was pending, appellant's retained trial counsel filed a motion for resentencing in the trial court. On February 22, 2017, the trial court ordered appellant's sentence corrected nunc pro tunc to show the middle term of four years for the section 273a child abuse conviction. On March 28, 2017, trial counsel's motion to withdraw as counsel of record was heard and denied. The trial court granted appellant's motion to reduce his Health and Safety Code section 11359 conviction to a misdemeanor in light of the change in law effectuated by Proposition 64 (§ 11361.8), and resentenced appellant to a six-month term for that conviction.

On October 30, 2017, after examining the entire record, appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist. On October 30, 2017, we sent a letter to appellant and his counsel, instructing counsel to send the record on appeal and a copy of the *Wende* brief to appellant. We also advised appellant that he had 30 days in which to personally submit any ground of appeal, contention or argument he wished us to consider. To date, we have not received a response from appellant.

We have reviewed the entire record on appeal. Appellant's guilty plea and the trial court's denial of a certificate of probable cause limit the scope of this appeal to "[g]rounds that arose after entry of the plea and do not affect the plea's validity" or "[t]he denial of a motion to suppress evidence under . . . section 1538.5." (Cal. Rules of Court, rule 8.304(b)(4); see § 1237.5.) We are satisfied appellant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.)

DISPOSITION

The judgment is affirmed.

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BENDIX, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

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