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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.

MAURIYON D. OBRIEN,

Defendant and Appellant.

B286793

(Los Angeles County  
Super. Ct. No. KA116556)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade Olson, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Mauriyon D. OBrien appeals from a judgment entered following his negotiated plea of no contest to carrying a loaded firearm, having a concealed firearm in a vehicle, and manufacturing, importing, keeping for sale, or giving or receiving a large-capacity magazine. OBrien contends his attorney provided ineffective assistance of counsel due to his failure to inform OBrien that his negotiated plea would result in felony convictions and that the felonies constituted strikes within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12).<sup>1</sup> OBrien also contends the charges were false. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *The Incident***

According to the probation officer's report, on October 24, 2017 police officers smelled the odor of marijuana emanating from OBrien and three other people. The four were sitting on a curb inside a park in Pomona. The officers searched a vehicle parked beside OBrien and the other individuals, and they recovered a loaded handgun with 16 rounds of ammunition from under the passenger seat. The officers determined that the firearm belonged to OBrien. They also learned that OBrien was an active member of a criminal street gang.

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<sup>1</sup> All further statutory references are to the Penal Code.

B. *The Felony Complaint, Plea, and Sentencing*

The People charged OBrien in a three-count felony complaint with carrying a loaded firearm, charged as a felony based on OBrien's active participation in a criminal street gang (§ 25850, subds. (a) & (c)(3)), having a concealed firearm in a vehicle (§ 25400, subd. (a)(1)), and manufacturing, importing, keeping for sale, or giving or receiving a large-capacity magazine (§ 32310, subd. (a)). The complaint also alleged that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)(A)).

At his arraignment on October 26, 2017 OBrien agreed orally and in writing to plead no contest to all counts.<sup>2</sup> The trial court stated on the record that as part of the agreement OBrien would receive a 16-month sentence in state prison. At the time he entered his plea, OBrien was advised of his constitutional rights and the nature and consequences of the plea, which he stated he understood. OBrien's counsel joined in the waivers of his constitutional rights. The trial court found OBrien's waivers and entry of his plea were voluntary, knowing, and intelligent.

The trial court sentenced OBrien to the lower term of 16 months in state prison on count 1 as the base term and the lower terms of 16 months on counts 2 and 3, to run concurrently with the sentence on count 1. The trial court dismissed the criminal street gang enhancement allegation. The court also ordered OBrien to pay statutory fines, fees, and assessments and awarded him six days of presentence credits.

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<sup>2</sup> OBrien also stipulated that the felony complaint would be deemed an information.

OBrien filed a timely notice of appeal. In his notice of appeal, OBrien checked the preprinted box that stated his “appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea.” The record does not contain a certificate of probable cause.

## **DISCUSSION**

We appointed counsel to represent OBrien on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On March 6, 2018 we advised OBrien that he had 30 days within which to submit any contentions or issues he wished us to consider. On March 29, 2018 OBrien submitted a supplemental brief in which he argued his defense counsel provided ineffective assistance of counsel by failing to explain that a consequence of his plea would be that he would have “three (prior felony convictions) that are false” on his record and that they qualified as strikes under the three strikes law. OBrien requests we remove the prior strike convictions from his record.

As a threshold matter, OBrien was never charged in the felony complaint with having suffered a prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12), nor did he admit to having convictions for prior serious or violent felonies. Rather, his plea of no contest was only to the three firearm offenses charged as felonies.

To the extent OBrien is challenging the failure of his attorney to explain that he was pleading no contest to a felony (instead of a misdemeanor), he is challenging the validity of his negotiated plea. However, a defendant who appeals his or her

conviction following a plea of no contest or guilty without a certificate of probable cause may only challenge the denial of a motion to suppress evidence under section 1538.5 or raise grounds arising after the entry of the plea that do not affect the validity of the plea. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b)(1); see *People v. Johnson* (2009) 47 Cal.4th 668, 683; *People v. Shelton* (2006) 37 Cal.4th 759, 769.)

A claim of ineffective assistance of counsel relating to a negotiated plea of no contest requires a certificate of probable cause. (*People v. Johnson, supra*, 47 Cal.4th at p. 683.) As the *Johnson* court explained, “as with most ineffective-assistance-of-counsel claims, a defendant would have to show not only that counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms, but also would have to show prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 694.) In order to determine whether counsel’s alleged inadequacy in presenting the motion was prejudicial, the appellate court would have to address the merits of the motion to withdraw. Consequently, . . . a certificate would be required.” (*Ibid.*)

OBrien’s claims that his attorney provided ineffective assistance of counsel and that he was falsely charged with the firearm offenses are therefore not cognizable on appeal. We have examined the record with respect to potential sentencing or post-plea issues that do not in substance challenge the validity of the plea and are satisfied OBrien’s appellate attorney has fully complied with the responsibilities of counsel and there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *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.

FEUER, J.\*

We concur:

PERLUSS, P. J.

SEGAL, 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.