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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

COLUMBUS DAVIS,

Defendant and Appellant.

B239717

(Los Angeles County
Super. Ct. No. SA077805)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Katherine Mader, Judge. Dismissed.

Suzan E. Hier, under appointment by the Court of Appeal; Columbus Davis, in
pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Columbus Davis pled no contest to one count of second degree robbery (Pen. Code, §§ 211, 212.5), and admitted the personal use of a firearm in the commission of the robbery (Pen. Code, § 12022.5). Pursuant to a plea agreement, the court imposed a state prison sentence of nine years, calculated as follows: the upper term of five years on the robbery count, plus the mid-term of four years on the firearm enhancement. Defendant was awarded 227 days of custody credits and ordered to pay various fines and fees. All remaining counts, two through seven, were dismissed.

Thereafter, defendant moved to represent himself and to withdraw his no contest plea, both of which were based primarily on the claim of misrepresentations by his defense counsel, duress and ineffective assistance of counsel during the plea bargaining. The same day, defendant filed a notice of appeal and a request for a certificate of probable cause, stating the same grounds set forth in his motion to withdraw. The notice of appeal did not identify any noncertificate issues for appeal. The only grounds marked on the Judicial Council form Notice of Appeal (CR-120) were certificate issues in paragraphs 2, subparagraphs (a)(3) and (4) of the form.

The record does not reflect a ruling on the motion to withdraw. However, on February 16, 2012, the trial court denied defendant's request for a certificate of probable cause.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared that she advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant filed a timely supplemental brief with the court.

Defendant's appeal must be dismissed because his request for a certificate of probable cause was denied. Defendant did not petition for a writ of mandate compelling issuance of the certificate of probable cause. "Where a certificate of probable cause has been denied on the merits the remedy is to seek review of the propriety of the denial. . . .

Only when it has been adjudged that probable cause for appeal exists and the certificate has issued, either because the trial court has affirmatively responded to a defendant's declaration of probable cause or because a proper court has reviewed a trial court's denial and mandated the issuance of the certificate, may appellate review of the trial court proceedings on the merits be had." (*In re Brown* (1973) 9 Cal.3d 679, 683; accord, *People v. Johnson* (2009) 47 Cal.4th 668, 676; *People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188-1189.)

Moreover, defendant's notice of appeal identifies *only* certificate issues as the bases for his appeal. As the Supreme Court explained, "[T]he Court of Appeal generally may not proceed to the merits of the appeal, but must order dismissal thereof, unless the defendant has filed a statement of certificate grounds as an intended notice of appeal, and has obtained a certificate of probable cause, in full compliance therewith. [¶] . . . [T]he Court of Appeal may nevertheless proceed to the merits of the appeal if the defendant has based his appeal solely on noncertificate grounds *and has filed a notice of appeal so stating.*" (*People v. Mendez* (1999) 19 Cal.4th 1084, 1099, italics added; see also Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304, subd. (b)(4).) Defendant did not do so.

Accordingly, we are without jurisdiction to review any issues on the merits, and defendant's appeal must be dismissed. (*People v. Mendez, supra*, 19 Cal.4th at p. 1099; Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304.)

DISPOSITION

The appeal filed February 10, 2012 is dismissed.

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GRIMES, J.

WE CONCUR:

RUBIN, ACTING P. J.

FLIER, J.