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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN DESHANE GIVENS,

Defendant and Appellant.

B287416

(Los Angeles County
Super. Ct. No. BA457210)

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

Law Offices of John F. Schuck and John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Ryan Deshane Givens pled no contest to being a felon in possession of a firearm and ammunition, and fleeing a pursuing officer while driving recklessly. The trial court sentenced him to 16 months in jail. Givens appeals. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

On April 23, 2017, Los Angeles Police Department Officer Saul Moran observed Givens seated in a parked car on 30th Avenue in Los Angeles. Moran knew Givens from prior contacts and arrests, and knew he was on probation. When Moran made a U-turn with the intent to conduct a probation search, Givens sped off. Moran did not pursue Givens. A few minutes later, Moran saw Givens's vehicle parked on 36th Avenue. Givens was walking away from the car. Moran observed an object he believed to be a firearm in Givens's waistband. When Moran turned his patrol vehicle onto 36th Avenue, Givens ran back to his car and drove off at high speed. Moran activated his patrol vehicle's lights and siren and attempted to stop Givens, but lost sight of him. During the pursuit, Givens committed a variety of traffic violations. Givens's maneuvers were captured on Moran's police vehicle's dashboard camera. Moran checked computerized records and determined that Givens was indeed on probation; that Givens's address was still a nearby location known to Moran; and that Givens and his residence were subject to search conditions. Moran and other officers went to the residence. Upon knocking and receiving no answer, the officers entered through

¹ Because Givens pled no contest before any evidence was adduced at trial, we derive the facts from the evidence presented at the hearing on the suppression motion.

an unlocked back door. In the living room, Moran observed an assault-type rifle and ammunition.

After a preliminary hearing, Givens was charged by amended information with two counts of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)),² unlawful possession of ammunition (§ 30305, subd. (a)(1)), and fleeing a pursuing officer while driving recklessly (Veh. Code, § 2800.2). The information also alleged Givens had suffered three prior felony convictions.

On October 17, 2017, Givens moved to set aside the information pursuant to section 995 on the ground that the evidence presented at the preliminary hearing was insufficient to establish probable cause. The court heard and denied the motion on November 22, 2017. The trial court subsequently struck count 4, one of the felon-in-possession counts, as unsupported by the evidence.

At some point prior to trial, Givens filed a *Pitchess*³ motion, which the trial court apparently denied without prejudice based on its finding that the supporting declaration was insufficient to establish good cause for *Pitchess* discovery.⁴

Trial commenced and a jury was empaneled on December 8, 2017. Givens stipulated that he was a convicted felon and not permitted to carry a firearm.

² All further undesignated statutory references are to the Penal Code.

³ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

⁴ Neither the written motion nor the transcript of the hearing have been made a part of the record on appeal.

On December 11, 2017, the defense filed a motion to suppress evidence pursuant to section 1538.5. The trial court conducted a hearing, at which Officer Moran testified. After hearing the testimony and considering the parties' arguments, the court indicated its tentative ruling was to deny the motion, but took the matter under submission.

The next day, December 12, 2017, the defense filed a second *Pitchess* motion, on the theory that Officer Moran's credibility was relevant to the suppression motion.

Also on December 12, before the court ruled on the *Pitchess* motion or issued a final ruling on the suppression motion, Givens withdrew his not guilty pleas and, over the prosecutor's objection, pled no contest to all three remaining counts, based on the trial court's indication it would sentence him to concurrent terms of 16 months in jail on each count. Givens also admitted suffering three prior felony convictions as alleged in the information. As agreed, the trial court sentenced Givens to the low term of 16 months on count 1, felon in possession of a firearm, and to concurrent terms of 16 months on counts 2 and 3 (unlawful possession of ammunition and fleeing a pursuing officer while driving recklessly). It imposed a restitution fine, a criminal conviction assessment, and a court operations assessment. It awarded Givens 194 days of custody credit, i.e., 97 days of actual custody credit and 97 days of presentence conduct credit. The court concluded the suppression and *Pitchess* motions were moot.

On January 9, 2018, Givens filed a timely notice of appeal. Givens did not obtain a certificate of probable cause.

DISCUSSION

After review of the record, Givens's court-appointed counsel filed an opening brief that raised no issues, and requested this

court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We advised Givens that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

Pursuant to section 1237.5 and California Rules of Court, rule 8.304(b), a criminal defendant who appeals 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 or raise grounds arising after the entry of the plea that do not affect the plea's validity. (*People v. Johnson* (2009) 47 Cal.4th 668, 677; *People v. French* (2008) 43 Cal.4th 36, 43; *People v. Shelton* (2006) 37 Cal.4th 759, 766.)

Givens's notice of appeal indicates he purports to appeal the denials of his motion to suppress evidence and his section 995 motion to set aside the information. The notice also states that the appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea.

Although a defendant may appeal the denial of a suppression motion without a certificate of probable cause (*People v. Maultsby* (2012) 53 Cal.4th 296, 299, fn. 2; Cal. Rules of Court, rule 8.304(b)(4)), in this case Givens may not challenge the trial court's resolution of his suppression motion because the trial court never ruled upon it. Instead, the court took the matter under submission. It had not issued a final ruling when Givens entered his plea. As the trial court's minute order states, the plea rendered the suppression motion moot. The absence of an adverse ruling on the suppression motion precludes appellate review. (*People v. Bolden* (2002) 29 Cal.4th 515, 542–543; *People v. Brewer* (2000) 81 Cal.App.4th 442, 459.)

The absence of a certificate of probable cause precludes any challenge to the trial court's denial of Givens's section 995 motion. A no contest plea admits every element of the offense. (*People v. Maultsby*, *supra*, 53 Cal.4th at p. 302; *People v. French*, *supra*, 43 Cal.4th at p. 49; § 1016.) Givens's section 995 motion was based on his contention that insufficient evidence was presented at the preliminary hearing to support a probable cause finding. Thus, any challenge to the court's ruling on the section 995 motion amounts to an attack on the validity of the plea itself. Even if the certificate requirement had been met, a defendant is precluded from raising issues that were waived by his plea. (*People v. Turner* (1985) 171 Cal.App.3d 116, 125.) Complaints about an illegal commitment brought via section 995 are waived by a guilty or no contest plea. (*People v. Woodford* (1986) 176 Cal.App.3d 944, 947–948; *People v. Lilienthal* (1978) 22 Cal.3d 891, 897.)

With respect to sentencing or post-plea issues that do not in substance challenge the validity of the plea itself (see *People v. Puente* (2008) 165 Cal.App.4th 1143, 1152), we have examined the record and are satisfied no arguable issues exist and Givens's attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.