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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.

DION BRYANT,

Defendant and Appellant.

B285883

(Los Angeles County
Super. Ct. No. MA070608)

APPEAL from an order of the Superior Court of Los Angeles County, Fernando L. Aenlle-Rocha, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Dion Bryant pled no contest to unlawfully driving or taking a vehicle. The trial court suspended imposition of sentence and placed him on probation. The trial court subsequently found Bryant in violation of probation, but reinstated probation. We affirm the trial court's order reinstating probation.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*¹

On February 18, 2017, Bryant and a friend, Katrina Hurt, were asleep in bed. When Hurt awoke, Bryant, her car keys, and her car were missing. Hurt had not given Bryant permission to drive her car because his driver's license had been suspended. She went to Bryant's address and observed her car parked across the street. When she attempted to contact Bryant, she was told he was not at the residence. However, she saw him looking out a window. Hurt notified police, who found Bryant inside the residence, along with Hurt's car keys.

2. *Procedure*

After being advised of his rights to a jury or court trial, to confront and cross-examine witnesses, to put on a defense, and against self-incrimination, on March 15, 2017, Bryant pleaded no contest to unlawfully driving or taking a vehicle in violation of Vehicle Code section 10851, subdivision (a). The trial court found there was a factual basis for the plea, Bryant's waiver of rights was made knowingly, understandingly, and intelligently, and his plea was freely and voluntarily made. In accordance with the negotiated disposition, the court suspended imposition of sentence and placed Bryant on formal probation for a period of

¹ Because Bryant pleaded no contest before trial, we take the facts from the probation report.

three years, subject to various terms and conditions, including that he serve 21 days in jail and perform 30 days of community labor. The court ordered appellant to make restitution to the victim as prescribed by the probation department, subject to a hearing, and imposed a restitution fine, a suspended probation revocation restitution fine, a criminal conviction assessment, a court operations assessment, and a vehicle code fee. It awarded Bryant 11 days of actual credit and 10 days of presentence conduct credit, for a total of 21 days.

On August 4, 2017, probation was revoked due to Bryant's failure to report to his probation officer, failure to comply with probation conditions, and arrest for driving with a suspended license. The trial court declared a doubt about Bryant's competency on September 14, 2017. At a hearing conducted on September 29, 2017, Bryant was found to be mentally competent.

On October 2, 2017, Bryant pled no contest to the new charge of driving with a suspended license (Veh. Code, § 14601) and admitted being in violation of probation in the instant matter. The court found him in violation but reinstated probation on the same terms and conditions as originally imposed.

Bryant filed a notice of appeal on October 19, 2017, purportedly from the judgment entered on March 15, 2017, and the order reinstating probation on October 2, 2017. The notice of appeal stated that Bryant was challenging the validity of the plea or admission, and that the appeal was based on the sentence or matters occurring after the plea. Bryant requested a certificate of probable cause on the ground he had been "compelled" to plead by his counsel, who had not adequately represented him, and he

had wished to present the defense of “implied consent.” The trial court denied the request for a certificate of probable cause.

DISCUSSION

After review of the record, appellant’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 appellant 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.

Appellant is precluded from challenging his original plea and sentence for two reasons. First, his notice of appeal was untimely, being filed approximately seven months after entry of judgment. (Cal. Rules of Court, rule 8.308(a); *In re Chavez* (2003) 30 Cal.4th 643, 650.) Second, even had his notice of appeal been timely, before challenging the validity of a no contest plea, a defendant must obtain from the trial court a certificate of probable cause. (Pen. Code, § 1237.5; *People v. Shelton* (2006) 37 Cal.4th 759, 766; *People v. Mendez* (1999) 19 Cal.4th 1084, 1099; Cal. Rules of Court, rule 8.304(b).) In the absence of a certificate of probable cause, we may not consider the validity of the plea and whether defendant was deprived of effective assistance of counsel. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76; *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244–245; *People v. Puente* (2008) 165 Cal.App.4th 1143, 1152.)

As to the proceedings conducted on October 2, 2017, in which the trial court found Bryant in violation of probation and reinstated probation, we have examined the record and are satisfied appointed counsel has fully complied with her responsibilities and no arguable issues exist. (*People v. Kelly*

(2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The order is affirmed

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.