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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.

TIMOTHY LIZANA,

Defendant and Appellant.

B246496

(Los Angeles County
Super. Ct. No. BA384849)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Clifford L. Klein, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Timothy Lizana appeals from the judgment of conviction entered pursuant to a plea agreement. We affirm.

On November 1, 2011, defendant was charged with four counts of second degree robbery (Pen. Code, § 211), and one count of carjacking (§ 215, subd. (a)). It was specially alleged defendant personally used a firearm in the commission of all five offenses (§ 12022.53, subd. (b)), and that the offenses were committed for the benefit of, in association with, or at the direction of a criminal street gang (§ 186.22, subd. (b)). The information alleged that on the evening of May 23, 2011, defendant and his codefendant Rodolfo Alberto Cortez¹ robbed four separate individuals at gunpoint, and also forcibly took the car of another individual at gunpoint. Defendant allegedly participated in this string of robberies and carjacking at the direction of a “shot caller” in the 18th Street gang, the criminal street gang in which defendant was admittedly a member.

At his arraignment, defendant pled not guilty to all five counts and denied the special allegations. Defendant was facing a maximum sentence in excess of 60 years. Before the start of trial, defendant entered into a plea agreement with the prosecution. In exchange for a state prison term of 23 years 8 months, defendant agreed to withdraw his plea of not guilty and to enter a new plea of no contest to the robbery charges in counts 1, 3 and 4. Defendant also agreed to admit to the personal firearm use and criminal street gang enhancements as to those three counts.

On October 30, 2012, the parties stipulated to a factual basis for the plea, and the plea agreement was duly placed on the record, with all requisite admonishments given to defendant. Defendant had the assistance of appointed counsel. The court found defendant made a knowing and voluntary waiver of his constitutional rights in entering into the plea agreement.

¹ Codefendant Cortez is not a party to this appeal.

On November 28, 2012, defendant was sentenced in accordance with the terms of the plea agreement to an aggregate state prison term of 23 years eight months, calculated as follows: the upper term of five years on count 1 (the base count), plus 10 years for the admitted personal firearm use allegation; a consecutive one-year term on count 3 (one-third the midterm), plus three years four months (one-third the 10-year term) for the admitted gang allegation; and, a consecutive one-year term on count 4 (one-third the midterm), plus three years four months (one-third the 10-year term) for the admitted gang allegation.² Defendant was awarded 623 days of custody credits, and ordered to pay various fines, fees, and restitution.

Defendant filed a timely notice of appeal and also made a request for a certificate of probable cause. Defendant's notice of appeal indicates he sought to appeal from the sentence, as well as the validity of the plea, pursuant to his request for a certificate of probable cause. Defendant stated that his appointed trial counsel "showed very little concern" or desire to represent him properly, thus "forcing" him to agree to the plea agreement offered by the prosecution.

The court denied defendant's request for certificate of probable cause. There is nothing in the record indicating defendant sought to timely challenge the court's denial of his request for a certificate of probable cause by the filing of a writ of mandate. (*People v. Johnson* (2009) 47 Cal.4th 668, 676-677 [defendant's remedy following trial court's denial of certificate of probable cause is to seek writ of mandate compelling its issuance]; see also Pen. Code, § 1237.5.) Defendant's appeal is therefore limited to a review for postplea sentencing error.

We appointed appellate counsel to represent defendant. Appellate counsel moved the trial court to amend the total amount of presentence custody credits awarded to defendant. A copy of the trial court's minute order of May 28, 2013, reflecting the

² Defendant was also sentenced to a concurrent term of three years arising from another matter (case No. BA389906).

modification of defendant's custody credits from 623 to 638 days was received by this court on June 6, 2013. The minute order duly reflects the Department of Corrections and Rehabilitation was provided an amended abstract of judgment accordingly.

Appointed counsel then filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his evaluation of the record. Counsel further declared he advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant did not file a supplemental brief.

We have examined the entire record and are satisfied that appointed counsel fully complied with his responsibilities in assessing whether or not any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.