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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.

EDDIE SAHINIAN,

Defendant and Appellant.

B261514

(Los Angeles County
Super. Ct. No. KA108268)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade D. Olson, Temporary Judge. Appeal dismissed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After the trial court denied his request to dispose of his felony charges as misdemeanors under Proposition 47, Eddie Sahinian entered a negotiated no contest plea to unlawfully driving or taking a vehicle with a prior related felony conviction (Veh. Code, § 10851, Pen. Code,¹ § 666.5). On appeal, Sahinian contends he was entitled to the Proposition 47 relief he sought in the trial court. We requested the parties to submit supplemental briefs addressing whether the appeal should be dismissed because Sahinian failed to obtain a certificate of probable cause. After review, we conclude we are bound by the Supreme Court's holding in *People v. Mendez* (1999) 19 Cal.4th 1084, 1099 (*Mendez*) that a defendant may not seek review of certificate issues unless he or she has complied with section 1237.5 and California Rules of Court, rule 8.304(b)(1),² specifically and in a timely fashion. Accordingly, Sahinian's notice of appeal is inoperative and we dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2014, Eddie Sahinian was charged in a three-count information with unlawfully driving or taking a 1993 Honda Civic, unlawfully driving or taking a vehicle with two prior related felony convictions and misdemeanor possession of burglary tools. Sahinian was also alleged to have served four separate prison terms for felonies within the meaning of section 667.5, subdivision (b).

At the January 8, 2015 arraignment on the information, Sahinian asked the trial court to reduce the felony counts to misdemeanor theft offenses under Proposition 47. The trial court denied the request, concluding the initiative did not apply to Vehicle Code section 10851 violations. Sahinian then entered a negotiated plea of no contest to the felony count of unlawfully driving or taking a vehicle with one prior related conviction in

¹ Statutory references are to the Penal Code unless otherwise indicated.

² All rule references are to the California Rules of Court.

return for a two-year lower term sentence to be served in county jail and dismissal of the remaining counts and enhancements.

On January 12, 2015, Sahinian timely filed a notice of appeal and checked the preprinted box indicating his appeal was after entry of a no contest plea and based on “other” grounds, for which he was required to complete a certificate of probable cause. In the space beneath the preprinted box, Sahinian stated he was challenging the trial court’s denial of his motion to reduce his felony counts to misdemeanors pursuant to Proposition 47. In requesting a certificate of probable cause, Sahinian asserted he “only entered his plea to the felony charge because the court did not grant his motion to reduce the charges to misdemeanors. If the court had granted his motion, [Sahinian] would have pleaded to the misdemeanor charges.” The trial court denied Sahinian’s request for a certificate of probable cause on January 14, 2015.

On March 9, 2015, Sahinian timely filed an amended notice of appeal, this time checking the preprinted box indicating his appeal was “based on the sentence or other matters occurring after the plea.” He did not request a certificate of probable cause.

DISCUSSION

The Appeal Is Inoperative For Noncompliance With Section 1237.5 and Rule 8.304(b)

Section 1237.5³ requires a defendant to obtain a certificate of probable cause from the superior court to file an appeal from a judgment of conviction entered after a guilty or no contest plea, including an appeal challenging the validity of the plea. (*Mendez, supra*, 19 Cal.4th at p. 1095.) However, “[n]otwithstanding the broad language of section

³ Section 1237.5 provides: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.

1237.5, it is settled that two types of issues may be raised in a guilty or nolo contendere plea appeal without issuance of a certificate: (1) search and seizure issues for which an appeal is provided under section 1538.5, subdivision (m); and (2) issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 74 (*Panizzon*); see rule 8.304(b).⁴

The certificate requirements of section 1237.5 “should be applied in a strict manner.” (*Mendez, supra*, 19 Cal.4th at p. 1098, see *In re Chavez* (2003) 30 Cal.4th 643, 650-655.) The Supreme Court has strongly criticized the practice in some appellate decisions of reaching the merits of the appeal in the interests of judicial economy, notwithstanding the defendant’s noncompliance with those certificate requirements. (*Mendez, supra*, 19 Cal.4th at pp. 1097-1098 [rejecting appellate courts’ approach of granting “dispensation[.]” to a defendant not in compliance with section 1237.5, reasoning the defendant may seek same relief by habeas petition]; *Panizzon, supra*, 13 Cal.4th at p. 89, fn. 15 [“[T]he purposes behind section 1237.5 will remain vital only if appellate courts insist on compliance with its procedures.”].) Indeed, as the Court in *Mendez* reasoned: “Even if we did not believe that section 1237.5 and rule [8.304(b)] should be

⁴ Rule 8.304(b) provides: “(b)(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court--with the notice of appeal required by (a)--the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause. [¶] (2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate. [¶] (3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal “Inoperative,” notify the defendant, and send a copy of the marked notice of appeal to the district appellate project. [¶] (4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on: [¶] (A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or [¶] (B) Grounds that arose after entry of the plea and do not affect the plea’s validity. [¶] (5) If the defendant’s notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).

applied in a strict manner, we would have to conclude that they should *not* be applied in a relaxed one. History has demonstrated that the search for ‘judicial economy’ in the expedient disposition of the individual appeal and its peculiar issues has been costly indeed, as fact-specific questions have arisen, time and again, demanding legally indeterminate answers.” (*Mendez, supra*, 19 Cal.4th at p. 1098 and fn. 9.) Accordingly, the Court concluded that relaxing the certificate requirement in search of “‘judicial economy’” has been a “futile” exercise that “must be abandoned.” (*Ibid.*) As a result, in the absence of compliance with the certificate requirements, the appeal is not “operative” and the reviewing court must dismiss it. (*Id.* at pp. 1095-1096.)

In assessing whether an appeal mandates a certificate of probable cause, courts examine the substance of the appeal: “[T]he crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made.” (*People v. Ribero* (1971) 4 Cal.3d 55, 63.) Thus, for instance, a claim that a guilty plea was induced by an illusory promise is a certificate issue, inasmuch as it is a question going to the legality of the proceedings and, specifically, the validity of the plea. (*Panizzon, supra*, 13 Cal.4th at p. 76.) A challenge to the factual basis of the plea by reason of a change in the law requires a certificate of probable cause. (*People v. Zuniga* (2014) 225 Cal.App.4th 1178, 1186-1187.) A challenge based on mental incompetence to enter a plea also requires a certificate of probable cause. (*People v. Hodges* (2009) 174 Cal.App.4th 1096, 1105.) Likewise, a certificate must be obtained to secure review of the lawfulness of the maximum term imposed pursuant to the negotiated plea notwithstanding the multiple punishment prohibition of section 654. (*People v. Shelton* (2006) 37 Cal.4th 759, 770-771, 766.)

Here, following the trial court’s denial of his request to have the two felony counts reduced to misdemeanors under Proposition 47, Sahinian agreed to plead no contest to one felony count in exchange for a lower term sentence and dismissal of the remaining felony and misdemeanor counts and accompanying sentencing enhancements. Sahinian’s claim the court erred in declining to grant his request falls into neither of the previously noted non-certificate exceptions of rule 8.304(b). Instead, his claim is tantamount to a

challenge to the validity of his plea to the felony count, rather than an attack on a sentencing or post-plea issue for which a certificate of probable cause is unnecessary. (See *Panizzon, supra*, 13 Cal.4th at p. 76.) Because a certificate of probable cause was required to pursue this appeal, we cannot proceed to the merits and must order dismissal (*Mendez, supra*, 19 Cal.4th at p. 1096.)

DISPOSITION

The appeal is dismissed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.