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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS BRANDON SMITH,

Defendant and Appellant.

B283506

(Los Angeles County
Super. Ct. No. KA115022)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade Olson, Commissioner. Affirmed.

A. William Bartz, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On April 11, 2017, Nicholas Brandon Smith (Smith) was charged with possession of firearm by a felon, in violation of Penal Code¹ section 29800, subdivision (a)(1) (count one) and unlawful possession of ammunition, in violation of section 30305, subdivision (a)(1) (count two).

The People further alleged that as to counts one and two, an executed sentence had to be served in state prison pursuant to section 1170, subdivision (h)(3), because Smith had suffered a prior conviction for a serious felony under section 1192.7 or a violent felony under section 667.5, subdivision (c), when convicted of violating section 211 on November 1, 2011.

The People also alleged that prior to the commission of the offenses alleged in counts one and two, Smith had been convicted of a serious or violent felony as defined in section 667, subdivision (d), and section 1170.12, subdivision (b), and was thus subject to sentencing pursuant to the provisions of section 667, subdivisions (b) through (i), and section 1170.12.

Lastly, the People alleged that Smith had served a term as described in section 667.5 for his prior section 211 conviction and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of that term.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On April 11, 2017, Smith pleaded no contest and admitted the special allegation pursuant to sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). The trial court found the allegation to be true as to count one only. Smith also admitted the prior felony conviction as to counts one and two.

Smith was sentenced to the low term of 16 months as the base term on count one, which was doubled pursuant to sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i), for a total term of two years 8 months in state prison. As to count two, Smith was sentenced to the low term of 16 months to run concurrently with the sentence imposed in count one. Smith was given credit for six days in custody, three days actual custody and three days good time and work time.

Smith filed a writ of mandate pursuant to *Brown v. Superior Court* (2016) 63 Cal.4th 335, and Code of Civil Procedure sections 1078 through 1089, seeking relief from any and all enhancements imposed as well as a recalculation of his sentence based on this relief. The trial court construed the letter as a request for resentencing under Proposition 57. The court denied Smith's request, stating, "Proposition 57 allows inmates that have completed their base term to have a hearing before the parole board. Thus, there is no resentencing option in the superior court."

On May 25, 2017, Smith requested his "discovery packet." The trial court denied Smith's request, stating, "There is no substantial right the defendant is attempting to

enforce.” Furthermore, the court observed, the court file did not contain a “ ‘discovery packet.’ ”

On June 8, 2017, Smith filed a notice of appeal and request for a certificate of probable cause. In the notice, Smith stated, “I did not enter a plea of no contest voluntarily. I was under extreme duress and coercion at the time I entered into the plea. The reasons that I was under duress were that I was being threatened with an excessive amount of jail time (8 years) if I didn’t agree to the plea bargain and because I do not believe I received effective assistance from my attorney because I was rushed into making a decision against my will.” The trial court denied Smith’s request for a certificate of probable cause.

Smith filed a timely notice of appeal and we appointed counsel to represent him on appeal. Appointed counsel filed an opening brief on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. Counsel advised Smith that he could submit any argument or issues that he wished our court to review. Smith has not filed any claims or arguments.

We have examined the entire record and are satisfied that Smith’s appellate counsel fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441–442; *People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

DISPOSITION

The judgment is affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.