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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE JAMES STEWART,

Defendant and Appellant.

B271156

(Los Angeles County  
Super. Ct. No. VA140415)

THE COURT:\*

In accord with a negotiated plea agreement, Kyle James Stewart (defendant) pleaded no contest to attempted murder and child abuse, and the trial court sentenced him to state prison for 15 years.

According to the probation officer's report, when deputies responded to defendant's residence they discovered his girlfriend had sustained multiple stab wounds to her back, head, arms and hands, resulting in a punctured and collapsed lung. The couple's four-year-old son had a bruise on his chest.

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\* BOREN, P. J.,

CHAVEZ, J.,

HOFFSTADT, J.

Defendant initially claimed someone had broken into the residence but later admitted using a kitchen knife to stab his girlfriend.

Defendant was charged with the following counts: (1) count 1, attempted murder (Pen. Code, §§ 187, subd. (a) & 664);<sup>1</sup> (2) count 2, corporal injury to a cohabitant (§ 273.5, subd. (a)); (3) count 3, assault with a deadly weapon (§ 245, subd. (a)(1)); and (4) count 4, child abuse (§ 273a, subd. (a)). The information further alleged great bodily injury enhancements (§ 12022.7, subd. (e)), and personal use of a deadly or dangerous weapon (§ 12022, subd. (b)(1)).

Prior to trial the court declared a doubt as to defendant's mental competence. (§ 1368.) Following an examination and hearing, however, the court found defendant competent to stand trial. A pretrial motion by defendant to replace his appointed counsel was denied. (*People v. Marsden* (1970) 2 Cal.3d 118.)

While represented by counsel, defendant entered into a negotiated disposition. Defendant agreed to plead no contest to attempted murder and child abuse, and to admit the bodily injury and personal use sentence enhancements as to the attempted murder. In exchange, the People agreed to request a sentence of 15 years, calculated as follows: the upper term of nine years for the attempted murder, plus five years for the great bodily injury enhancement, plus one year for the personal use enhancement; the four-year child abuse sentence would run concurrently. Defendant and his counsel properly executed a "Felony Advisement of Rights, Waiver, and Plea" form. The trial court confirmed that defendant understood his statutory and constitutional trial rights, and that defendant agreed to waive these rights by

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

resolving his case through a plea bargain. Defense counsel stipulated to a factual basis for the plea. The court accepted the pleas and admissions and sentenced defendant according to the plea bargain. The remaining counts and allegations were dismissed.

Subsequently, defendant filed a notice of appeal and requested a certificate of probable cause, specifically challenging the validity of the plea. The trial court denied the request for a certificate of probable cause.

This court appointed counsel to represent defendant on appeal. Counsel filed an “Opening Brief” pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record.

### **DISCUSSION**

Defendant’s request for a certificate of probable cause essentially claims the plea was invalid because defendant was not mentally competent to enter a plea, and furthermore, he was never informed by the trial court or his counsel, of the consequences of his no contest plea. But, defendant’s guilty plea and the denial of his request for a certificate of probable cause limit the potential scope of defendant’s appeal to “grounds that arose after entry of the plea and do not affect the plea’s validity” or “the denial of a motion to suppress evidence under Penal Code section 1538.5.” (*People v. Maultsby* (2012) 53 Cal.4th 296, 299, fn. 2.)

The certificate requirements of section 1237.5 “should be applied in a strict manner.” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098.) Our Supreme Court is critical of the practice in some appellate decisions of reaching the merits of the appeal, absent the defendant’s compliance with

section 1237.5's certificate requirements. (*Mendez*, at pp. 1097-1098 [rejecting appellate courts' approach of granting "dispensation[]" to defendant not in compliance with section 1237.5 under rationale that defendant may seek same relief by habeas corpus petition]; *People v. Panizzon* (1996) 13 Cal.4th 68, 89, fn. 15 ["the purposes behind section 1237.5 will remain vital only if appellate courts insist on compliance with its procedures"].) We cannot review the validity of the plea in this case because defendant did not obtain a certificate of probable cause and no exception to the requirement applies. (*People v. Zuniga* (2014) 225 Cal.App.4th 1178, 1182.)

We also reviewed the record for error and did not find any reasonably arguable appellate issues.

#### **DISPOSITION**

The judgment is affirmed.

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