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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ROBERT VOSKANYAN, Defendant and Appellant.	B278821 (Los Angeles County Super. Ct. No. PA083749)

THE COURT*:

Robert Voskanyan (defendant) filed a timely notice of appeal following his entry of a plea of no contest to one count of driving recklessly while fleeing from a police officer (Veh. Code, § 2800.2), one count of burglary (Pen. Code, § 459),[1] one count of receiving stolen property (§ 496d, subd. (a)) and one count of carjacking (§ 215, subd. (a)), and admitted that he had served a

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* ASHMANN-GERST, Acting P.J. HOFFSTADT, J. GOODMAN, J.†

† Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 All further undesignated statutory references are to the Penal Code.

prior prison term (§ 667.5, subd. (b)). Defendant was sentenced to a total term of eight years. The notice of appeal states that it is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. Defendant did not seek a certificate of probable cause to raise any other issues.

We appointed counsel to represent defendant on this appeal. Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requested this court to independently review the record on appeal to determine whether any arguable issues exist. On April 19, 2017, we sent a notice to defendant, advising him he had 30 days in which to personally submit any contentions or issues which he wished us to consider. On May 15, 2017, defendant filed a supplemental brief. In this brief, he contends his plea was the product of "both selective and vindictive prosecution" and his appellate counsel was constitutionally ineffective for failing to raise this claim.

BACKGROUND

On May 29, 2015, one or more men broke into Curtis Haynes's storage locker and took property worth about $8,000. Haynes identified defendant in a photographic lineup as one of the men who broke into his storage locker.

On June 19, 2015, defendant and his brother left the San Fernando courthouse, got into a black BMW sedan and drove away with defendant at the wheel. Defendant was wanted by police for the storage locker burglary and his brother was wanted for a probation violation. Los Angeles Police Officer Luke Bennett followed them, as did Officers Seibert and Medina, who were in a marked patrol car. Officers Seibert and Medina turned on their lights and siren in an attempt to pull the brothers over. Defendant pulled

over to the curb, but then drove away rapidly when the officers got out of their patrol car and approached the BMW.

The BMW drove through a red light, travelling at about 60 to 70 miles per hour on streets with posted speed limits of 30 to 35 miles per hour. The officers lost sight of the BMW on Laurel Canyon. They continued on Laurel Canyon and were flagged down by a man at a gas station who told the officers that two Armenians had just gotten out of a black BMW and were now in a pickup truck on Laurel Canyon.

The officers caught up with the pickup truck and "initiated a felony high risk stop" with their lights and siren activated. Defendant and his brother got out of the pickup truck, as did its driver, Francisco Rodriguez. The brothers were arrested.

Rodriguez testified that two Middle Eastern men approached his truck as he was waiting to make a left turn onto Laurel Canyon. They asked for a ride. As Rodriguez was trying to decide, one of the men reached inside the truck and opened the door, and Rodriguez felt as if he had no choice but to give them a ride. Rodriguez was afraid for his own safety. He did not know the men, he was outnumbered by them and he was aware of robberies going on. Rodriguez had heard a siren just before the two men approached his truck, and he noticed the men were walking really fast toward his truck. He thought maybe they were running from the police.

Once the men were in the truck, Rodriguez turned onto Laurel Canyon. He drove about half a block before being pulled over by police.

DISCUSSION

Defendant was originally charged with seven offenses. As part of defendant's plea agreement, three charges against him were dismissed: one count of grand theft of personal property (§ 487), one count of receiving stolen

property (§ 496, subd. (a)) and one count of kidnapping to commit carjacking (§ 209.5, subd. (a)).

1. Probable Cause Claim

A kidnapping for carjacking conviction carries a life sentence. (§ 209.5, subd. (a).) Defendant contends the prosecutor lacked probable cause to bring this charge, but charged it anyway to force him to accept a plea agreement rather than go to trial and face the possibility of a life sentence. He variously describes the prosecutor's action as malicious prosecution, vindictive prosecution and selective prosecution.

Defendant did not obtain a certificate of probable cause, and so on appeal he is limited to matters arising after the plea which do not affect the validity of the plea. His contention clearly attacks the validity of the plea and so is not cognizable on appeal. (§ 1237.5.)

2. Ineffective Assistance of Counsel

Defendant's ineffective assistance of counsel claim is premised on his appellate counsel's failure to raise the lack of probable cause issue on appeal. Counsel could not have raised the issue on appeal without obtaining a certificate of probable cause. Even if we were to construe defendant's claim as including a contention that counsel should have obtained such a certificate, the claim would still fail.

In order to prevail on an ineffective assistance of counsel claim, defendant must show that his counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's error, a different result would have been reasonably probable. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-218.) "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a

result of the alleged deficiencies." (*Strickland v. Washington,* at p. 697.) "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." (*Ibid*.)

Here, there is no reasonable probability that defendant would have received a more favorable outcome if his appellate counsel had raised, or attempted to raise, the issue of probable cause on appeal. Testimony at the preliminary hearing established probable cause for the section 209.5 charge.

Carjacking is the felonious taking of a motor vehicle in the possession of another, against his will, accomplished by means of force or fear. (§ 215.) Kidnapping for carjacking requires that "the movement of the victim is beyond that merely incidental to the commission of the carjacking, the victim is moved a substantial distance from the vicinity of the carjacking, and the movement of the victim increases the risk of harm to the victim over and above that necessarily present in the crime of carjacking itself." (§ 209.5, subd. (b).)

Rodriguez clearly testified that he was afraid of the men and once one of them reached inside the truck and opened the door, he felt he had no choice but to give the men a ride. The men's movement of Rodriguez was far in excess of what was needed to take the truck from him and so was not incidental to the carjacking. The truck was moved from a side street through a busy intersection onto a main street, and then half a block down that main street. (See *People v. Martinez* (1999) 20 Cal.4th 225, 233 [no minimum distance required for aggravated kidnapping].) By keeping Rodriguez in the truck while they were being pursued by police, defendant and his brother increased the risk of harm to Rodriguez. Although Rodriguez did not identify defendant or his brother as the carjackers, Officer Bennett's testimony was sufficient to show that the brothers were the carjackers.

3. Independent Review of the Record

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende, supra,* 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.)

DISPOSITION

The judgment is affirmed.