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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.

LAVANCE MCNAIR,

Defendant and Appellant.

B286884

(Los Angeles County
Super. Ct. No. BA456932)

APPEAL from a judgment of the Superior Court of Los Angeles County, Scott M. Gordon, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Lavance McNair¹ appeals from the judgment entered following his negotiated no contest plea to aggravated assault. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

According to the preliminary hearing transcript, McNair failed to pay for coffee and a sandwich before leaving a convenience store. When a store clerk attempted to detain him outside, McNair pushed her and threw the coffee at her.

On May 30, 2017, the People filed an information charging McNair with one count of second degree robbery (Pen. Code, § 211)² with allegations he had served 15 separate prison terms for felonies (§ 667.5, subd. (b)). At his arraignment, McNair requested to represent himself (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562]). The trial court granted his request. McNair pleaded not guilty to the charge and denied the special allegations.

On June 27, 2017, McNair filed a motion to suppress evidence (§ 1538.5). On August 9, 2017, McNair filed a motion to set aside the information (§ 995), which was denied on August 18, 2017.

On September 7, 2017, the People filed an amended information charging McNair with robbery, assault with a deadly weapon (coffee) (§ 245, subd. (a)(1)), assault by means of force

¹ The notice of appeal was filed in the name of Lavance McNair, which he stated in court was his true name. However, the name that otherwise appears in the clerk's transcript and reporter's transcript is Marvin Mack. Lavance McNair is listed as an alias.

² All statutory references are to the Penal Code.

likely to produce great bodily injury (§ 245, subd. (a)(4)). The information alleged McNair had served 15 separate prison terms for felonies.

The same day, McNair agreed to plead no contest to assault with force likely to produce great bodily injury. In return, McNair would be sentenced to the lower prison term of two years and the remaining counts and special allegations would be dismissed.

At the time he entered his plea, McNair was advised of his constitutional rights and the nature and consequences of the plea, which he stated he understood. The trial court expressly found McNair's waivers and plea were voluntary, knowing and intelligent and there was a factual basis for the plea.

On October 10, 2017, in accordance with the plea agreement, the court sentenced McNair to a two-year prison term. The court also imposed statutory fines, fees and assessments and awarded McNair 332 days of presentence custody credit. The remaining counts and special allegations were dismissed on the People's motion.

McNair filed a timely notice of appeal, in which he checked the preprinted boxes indicating his appeal was based on "the sentence or other matters occurring after the plea that do not affect the validity of the plea," and "the denial of a motion to suppress evidence under Penal Code section 1538.5." McNair did not request a certificate of probable cause.

DISCUSSION

We appointed counsel to represent McNair on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. In a notice dated June 20, 2018, we attempted to advise McNair he had 30 days within which to submit any contentions or issues he wished us to consider. On August 7, 2018, the notice was returned by the North Kern State Prison with a notation McNair had been discharged as of April 28, 2018; “not on database.”³ On August 27, 2018, McNair filed a request for leave to file a supplemental opening brief. On September 18, 2018, we granted McNair’s request and ordered that his supplemental brief was due 30 days from the date of the order. McNair has not filed a supplemental brief as permitted by the extension.

We have examined the record, which does not show that the trial court heard or ruled on the motion to suppress evidence prior to the entry of the plea. With respect to potential sentencing or post-plea issues that do not in substance challenge the validity of the plea itself, we are satisfied McNair’s appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

³ When we appointed appellate counsel for McNair, we directed McNair “to keep the court informed of his/her mailing address at all times. If you move, you MUST notify the clerk of this court immediately; otherwise you may not receive important notices concerning your appeal.” McNair has not provided any information regarding his current address following his apparent release from the North Kern State Prison.

DISPOSITION

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.