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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. BRAIDEN JOHN ROLLON, Defendant and Appellant.	B289021 (Los Angeles County Super. Ct. No. KA116798)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade D. Olson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No Appearance for Plaintiff and Respondent.

Braiden John Rollon pled no contest to two counts of lewd acts upon a child (Pen. Code, § 288, subd. (a))[1] and was sentenced to 10 years in prison, pursuant to a plea agreement. On appeal from the judgment, Rollon's appellate counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) summarizing the facts in this case and the procedural history, but raising no issues, and asked this court to independently review the record. Rollon purports to challenge only his sentence, and not the validity of his plea. We conclude that by challenging his negotiated sentence Rollon effectively challenges the validity of his plea. Because Rollon did not obtain a certificate of probable cause (§ 1237.5), we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 2017, the district attorney filed a complaint alleging two counts of lewd acts upon a child occurring on April 15 and 16, 2014. The victim was a 10-year-old girl, and Rollon was a family friend.

The district attorney offered a plea agreement providing that Rollon would be sentenced to 10 years in prison if he pled no contest to both counts. On January 29, 2018, counsel stipulated that the complaint be deemed an information, the trial court advised Rollon of certain rights and the consequences of a conviction, and Rollon waived his rights and pled no contest to both counts. The court accepted the plea, convicted Rollon of both counts, and sentenced him to 10 years in prison. The 10-year term consists of the high term of eight years for count 1 plus a consecutive 2 years, as one-third of the middle term, for count 2.

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[1] All undesignated section references are to the Penal Code.

The court imposed assessments and restitution fines, required registration as a sex offender under section 290 and an AIDS test under section 1202.1, and awarded a total of 2 days of custody credits.

On February 6, 2018, Rollon filed a request for resentencing under section 1170, subdivision (d). Rollon filed letters from the victim's family members expressing concern for Rollon and requesting a more lenient sentence. The probation officer submitted a report. On March 23, 2018, the trial court heard and denied the request for resentencing.

On March 27, 2018, Rollon filed a notice of appeal and requested a certificate of probable cause (§ 1237.5) to challenge the validity of his plea. The trial court denied the request for a certificate of probable cause.

DISCUSSION

A certificate of probable cause is a prerequisite to an appeal from a judgment of conviction after a plea of guilty or no contest, except in limited circumstances. (§ 1237.5; *People v. Johnson* (2009) 47 Cal.4th 668, 676–677.) A defendant seeking to challenge the judgment after pleading guilty or no contest must file "a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional or other grounds going to the legality of the proceedings." (§ 1237.5, subd. (a).) The trial court must issue the certificate if the defendant's statement presents any cognizable issue that is not clearly frivolous and vexatious. (*Johnson*, at p. 676.) The defendant may challenge the denial of a certificate by filing a petition for writ of mandate in the Court of Appeal. (*Ibid.*)

"The purpose for requiring a certificate of probable cause is to discourage and weed out frivolous or vexatious appeals challenging convictions following guilty and nolo contendere pleas. [Citations.] The objective is to promote judicial economy 'by screening out wholly frivolous guilty [and nolo contendere] plea appeals before time and money is spent preparing the record and the briefs for consideration by the reviewing court. [Citations.]'" (*People v. Panizzon* (1996) 13 Cal.4th 68, 75–76.)

A certificate of probable cause is not required to challenge a ruling concerning an allegedly unlawful search or seizure because section 1538.5 authorizes appellate review of such a ruling "notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty." (*Id.*, subd. (m); see *People v. Johnson*, *supra*, 47 Cal.4th at p. 677.) A certificate also is not required when the appellant claims that error occurred in post-plea proceedings not involving the validity of the plea. (*Johnson*, at p. 677; see Cal. Rules of Court, rule 8.304(b)(4).)

A challenge to a sentence imposed after a guilty or no contest plea is a challenge to the validity of the plea itself if the defendant agreed to the specific sentence as part of the plea agreement. (*People v. Panizzon*, *supra*, 13 Cal.4th at pp. 77–79; see *People v. Johnson*, *supra*, 47 Cal.4th at pp. 678–679; *People v. Hurlic* (2018) 25 Cal.App.5th 50, 55–56.) A challenge to such a sentence does not involve a claim of post-plea error separate from the validity of the plea. (*Panizzon*, at p. 78.)

In *Panizzon*, *supra*, 13 Cal.4th 68, the defendant agreed to a sentence of life with the possibility of parole, plus 12 years, as part of a plea agreement. On appeal, the defendant argued that his sentence was disproportionate to those of his codefendants and constituted cruel and unusual punishment under the federal

and state Constitutions. (*Panizzon*, at pp. 73–74.) The Supreme Court concluded that the challenged sentence was an integral part of the plea agreement. By attacking the sentence, the defendant was attacking the validity of the plea itself. (*Id*. at pp. 77–78.) "[B]y contesting the constitutionality of the very sentence he negotiated as part of the plea bargain, defendant is, in substance, attacking the validity of the plea." (*Id*. at p. 78.) "[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself." (*Id*. at p. 79.) The appeal therefore required a certificate of probable cause. Absent a certificate, the appeal was subject to dismissal. (*Id*. at pp. 73, 79, 89–90 & fn. 15.)

In contrast, a certificate of probable cause is not required to challenge the trial court's exercise of sentencing discretion where the plea agreement provided for the court to exercise its sentencing discretion and did not specify a particular sentence. Such an appeal does not challenge the validity of the plea agreement. (*People v. Buttram* (2003) 30 Cal.4th 773, 790–791; see *People v. Hurlic*, *supra*, 25 Cal.App.5th at pp 55–56.)

The record here shows that Rollon agreed to a 10-year sentence as part of his plea agreement. The prosecutor specified the term of imprisonment on the record, and Rollon acknowledged his understanding:

"[Prosecutor]: You will be going to prison on this case for 10 years. Once you are released you will be on parole or post-release community supervision. That has conditions. If you violate any of them you can be returned to custody for each violation. Do you understand all of that, sir?"

"The defendant: Yes."

Having agreed to the specific sentence imposed by the trial court, Rollon cannot challenge the sentence on appeal without first obtaining a certificate of probable cause. (*People v. Panizzon*, *supra*, 13 Cal.4th at pp. 77–79.) Absent the required certificate, we must dismiss the appeal without reviewing the merits. (*Id*. at pp. 89–90 & fn. 15.)

DISPOSITION

The appeal is dismissed.

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MICON, J.*

We concur:

MANELLA, P. J. WILLHITE, J.

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