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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

THE PEOPLE, Plaintiff and Respondent, v. LENNAL KHABIR SHABAZZ, Defendant and Appellant.	B238895 (Los Angeles County Super. Ct. No. LA068027)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Jesic, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

After the trial court granted the motion of defendant and appellant Lennal Khabir Shabazz to represent himself, it denied defendant's motion to suppress evidence under Penal Code section 1538.5[1] and motion to dismiss under section 995. Defendant entered a plea of no contest to the charge of receiving stolen property in count 6 (§ 496) and admitted serving one prior prison term within the meaning of section 667.5, subdivision (b). Pursuant to the case settlement agreement, six remaining counts were dismissed, and defendant was sentenced to a total of four years in state prison.

This court directed the trial court to accept defendant's late notice of appeal. Counsel was appointed to represent defendant on appeal. On August 23, 2012, appointed counsel filed a brief raising no issues but asking this court to independently review the record for arguable contentions pursuant to *People v Wende* (1979) 25 Cal.3d 436. Defendant was advised by letter from this court, dated August 29, 2010, of his right to submit a supplemental brief on appeal within 30 days.

Defendant failed to file a supplemental brief in a timely fashion. This court granted permission to file a late brief on December 6, 2012.

STATEMENT OF FACTS FROM THE SECTION 1538.5 MOTION

Los Angeles Police Officer Joshua Rider and Detective Joe Olivarez went to the Los Angeles Motel at 5070 Washington Boulevard on June 2, 2011, to conduct a compliance check pursuant to a local ordinance. They determined that defendant, who was the registered occupant of one of the rooms, was on active parole. They went to defendant's room. Defendant confirmed that he was on parole and that he understood he was subject to a search and seizure condition. Defendant agreed to allow the officers to search his room. During the search, the officers discovered a bag containing what appeared to be methamphetamine and also credit and debit cards in names other than defendant's.

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[1] All further statutory references are to the Penal Code.

After considering argument from the parties, the trial court ruled the search was justified by defendant's consent and was valid based on defendant's status as a parolee.

DISCUSSION

Defendant raises the following issues in his supplemental brief: (1) no cause existed for the officers to approach or search defendant; (2) justification of the search as a condition of parole was improper because there was no evidence other than hearsay that defendant was a parolee; (3) defendant's motion under section 995 should have been granted; (4) increasing defendant's sentence based on prior offenses violates the Sixth Amendment and section 654; (5) defendant should have been sentenced for a misdemeanor violation of section 496 based upon the value of the property.

Because defendant appeals following a plea of no contest which included an agreed upon sentence, the first two issues raised by defendant are the only issues cognizable on appeal. The notice of appeal is not supported by a certificate of probable cause, so the appeal is limited to challenging the denial of his motion to suppress evidence under section 1538.5. (§§ 1237.5, 1538.5, subd. (m); *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1576; *People v. Whitfield* (1996) 46 Cal.App.4th 947, 959.) Defendant has no right to appellate review of the trial court's ruling on his motion under section 995 following a guilty or no contest plea, as the plea admits all the elements of the offense and therefore resolves the issue of probable cause. (*People v. Brown* (1971) 18 Cal.App.3d 1052, 1054-1055.) Defendant entered a plea of no contest in return for an agreed upon sentence, and therefore the terms of the sentence may not be reviewed on appeal. (*People v. Panizzon* (1996) 13 Cal.4th 68, 78-79.)

Accordingly, the only issues before this court are the first two raised by defendant—that there was no cause for the officers to approach or search defendant and justification of the search as a condition of parole was improper because there was no evidence other than hearsay that defendant was a parolee. Both contentions lack merit.

"Pursuant to California Constitution, article I, section 28, subdivision (d), we review challenges to the admissibility of evidence obtained by police searches and seizures under federal constitutional standards. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1291; *In re Tyrell J.* (1994) 8 Cal.4th 68, 76.)" (*People v. Woods* (1999) 21 Cal.4th 668, 674.) In reviewing an order denying a motion to suppress evidence under section 1538.5, we defer to the trial court's factual findings but make a de novo determination of the applicable law and its application to the Fourth Amendment. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140; *People v. Alvarez* (1996) 14 Cal.4th 155, 182; *People v. Williams* (1988) 45 Cal.3d 1268, 1301.)

"It is 'well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.' (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219; [*People v.*] *Bravo* [(1987)] 43 Cal.3d [600,] 605.)" (*People v. Woods, supra*, 21 Cal.4th at p. 674.) "A warrantless search is unreasonable under the Fourth Amendment unless it is conducted pursuant to one of the few narrowly drawn exceptions to the constitutional requirement of a warrant. (U.S. Const., 4th Amend.; *Arizona v. Gant* (2009) 556 U.S. 332, 338 (*Gant*); [*People v.*]*Woods, supra,* 21 Cal.4th at p. 674; *People v. Bravo*[, *supra,*] 43 Cal.3d [at p.] 609.) California's parole search clause is one of those exceptions. (*Samson v. California* (2006) 547 U.S. 843, 846, 850–857 (*Samson*).)" (*People v. Schmitz* (Dec. 3, 2012, S186707) __ Cal.4th ___ [2012 D.A.R. 16140].)

"Under California statutory law, every inmate eligible for release on parole 'is subject to search or seizure by a . . . parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause.' (Pen. Code, § 3067, subd. (b)(3).) Upon release, the parolee is notified that '[y]ou and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections [and Rehabilitation] or any law enforcement officer.' (Cal. Code Regs., tit. 15, § 2511, subd. (b)(4); see also Cal. Code Regs., tit. 15, § 2356 [requiring the department staff to notify the prisoner of the conditions of parole

before release].)" (*People v. Schmitz, supra*, __ Cal.4th at p. __ [2012 D.A.R. at pp. 16140-16141].)

Defendant's claim that the search violated the Fourth Amendment because the officers lacked cause to approach him is of no constitutional significance. Officers may initiate a consensual encounter with citizens without running afoul of the Fourth Amendment. (*People v. Meredith* (1992) 11 Cal.App.4th 1548, 1561, fn. 8.) Merely knocking on a motel room door does not constitute a search or seizure. No search took place until defendant admitted he was on parole and consented to the search of the room. Substantial evidence supports the trial court's order upholding the search as both consensual and a valid parole search. Defendant's argument that there was no competent evidence that he was a parolee is mistaken. Not only did the officers conduct a computer search to determine defendant's parole status, but defendant confirmed he was a parolee.

We have examined the entire appellate record, as well as the superior court file in this case. No arguable issues exist that are cognizable on appeal after a plea of no contest. Moreover, none of the non-search issues raised by defendant provide any basis for a find of error or prejudice. The judgment is affirmed. (*Smith v. California* (2000) 528 U.S. 259.*)*

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.