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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS JOSEPH GONDA,

Defendant and Appellant.

2d Crim. No. B289368  
(Super. Ct. No. 2015025632)  
(Ventura County)

Douglas Joseph Gonda was charged with assault with a gun and shooting at an occupied vehicle, with gun use and gang allegations. (Pen. Code, §§ 245, subd. (b), 246, 186.22, subd. (b)(1), 12022.5, subds. (a), (d), 12022.53, subd. (c).) In a negotiated agreement, appellant waived his right to trial, pled guilty to assault with a gun, and admitted the gang and gun use allegations. The trial court accepted the admissions and plea.

The probation report and preliminary hearing transcript forming the factual bases for appellant's plea disclose that on August 7, 2015, deputies were flagged down by a distraught woman whose car window was shattered by a bullet while she

was driving with her sister in Fillmore. Appellant admitted being at the shooting scene during a gang confrontation; the women passing in their car were unintended victims. Surveillance camera images and eyewitnesses indicated that appellant was the shooter.

At sentencing in January 2018, appellant received the agreed-upon 13-year prison term, consisting of the upper term of nine years for the assault plus a four year enhancement for gun use. The court struck the gang allegation and dismissed the remaining charges.

Appellant appealed. He requested a certificate of probable cause, asserting that retained counsel assured his family of a six-year prison term; he also pointed to his youth, mental illness and impaired state of mind due to drug abuse. The court granted appellant's request. (Pen. Code, § 1237.5.)

We appointed counsel to represent appellant. After examining the record, counsel filed an opening brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436.) On July 20, 2018, we advised appellant that he could submit any contentions or issues that he wished to raise on appeal.

Appellant filed a supplemental brief on August 1, 2018. It reads: "I have not been interviewed for my mental state at the time of my 'crime' I committed [*sic*] as a youth offender & drug addict & the medication I take I was off at the time. I believe I should be taken back to court on these reasons."

A guilty plea is a judicial admission of each element of the charge and a stipulation that the People need not introduce any proof to support the accusation. (*People v. Thomas* (1986) 41 Cal.3d 837, 844; *People v. Voit* (2011) 200 Cal.App.4th 1353, 1363-1364.) "[I]t is itself a conviction; nothing remains but to

give judgment and determine punishment.” (*Boykin v. Alabama* (1969) 395 U.S. 238, 242; *People v. Alfaro* (2007) 41 Cal.4th 1277, 1300.) The plea restricts any appeal from the judgment “to issues based on ‘reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings’ resulting in the plea.” (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895, quoting Pen. Code, § 1237.5.)

Appellant initialed a “waiver of appeal” above his signature on the plea agreement. The waiver reads, “I understand that unless I give up the right to appeal, the law would permit me to appeal to a higher court following my plea of guilty or no contest in order to raise reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings . . . . I now waive and give up my right to appeal in this case.”

Normally, a written waiver of the right to appeal a negotiated sentence forecloses review “of events predating entry of the plea and waiver.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 84, 86.) Counsel’s unmet assurance of a six year term and appellant’s age, drug abuse and failure to take prescribed medication are events predating appellant’s plea and waiver.

Though appellant’s written agreement waived his right to appeal, the trial court said, “Mr. Gonda, this is an appealable sentence and conviction. You have a right to challenge what I ordered and the sentence I’ve imposed by filing the notice of appeal within 60 days of today’s date with the Court of Appeals [*sic*].” The court asked if appellant understood his appeal rights and he replied, “Yes, sir.” Because the court gave appellant the right to appeal and granted a certificate of probable cause, we must continue to the merits. (*People v. Kunes* (2014) 231 Cal.App.4th 1438, 1442-1443.)

To the extent appellant claims his plea was improperly induced, he is challenging the legality of the proceedings resulting in the plea. (*People v. DeV Vaughn, supra*, 18 Cal.3d at p. 896; *People v. Panizzon, supra*, 13 Cal.4th at p. 79 [a challenge to a sentence imposed as part of a plea bargain is a challenge to the validity of the plea itself].) Appellant asserted, in his request for a certificate of probable cause, that counsel promised a shorter sentence. According to appellant, at some unspecified point counsel spoke to appellant's *family* and "assured them he would get me 6 years."

No promise was made to appellant, who instead agreed to a sentence of 13 years "to protect [himself] from a greater sentence." (*People v. Shelton* (2006) 37 Cal.4th 759, 768.) Appellant's potential maximum sentence was 19 years, as he acknowledged in his written plea agreement. We can infer a mutual understanding on the part of appellant, his counsel and the People "that, absent the agreement for the lid, the trial court might lawfully impose an even longer term." (*Ibid.*) A promise to appellant's family--perhaps made early in the proceedings before evidence was presented at the preliminary hearing--does not invalidate appellant's plea. Appellant heard the testimony and assessed the difficulty of refuting it. He discussed the risks of trial with counsel and made an informed choice to plead guilty to one count. There is no basis for invalidating that choice.

Contrary to his claim of being "a youth offender," appellant was not a minor. His date of birth is April 4, 1997. On August 7, 2015, when he committed the crime, appellant was 18 years and 4 months old. By the time he negotiated a plea and was sentenced, appellant was over 20 years old.

Though appellant argues that he was not interviewed about his mental state, drug addiction or medication use, the probation report belies his claim. It states that appellant has used marijuana and alcohol since age 15. He has used methamphetamine since age 17 and smokes four grams daily. He does not consider himself an addict or participate in a drug or alcohol treatment program. He listed three prescribed drugs he uses for anxiety and Attention Deficit Hyperactivity Disorder. Appellant was interviewed and disclosed factors that might mitigate his crime.<sup>1</sup>

### **DISPOSITION**

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

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<sup>1</sup> The report also discusses appellant's "19 major disciplinary write-ups" while in custody, including challenging deputies to fight and arming himself with weapons in preparation to fight staff. It concludes that he is deeply entrenched in criminal street gangs and willing to kill for the benefit of his gang, posing a threat to the community.

Bruce A. Young, Judge

Superior Court County of Ventura

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

No appearance for Plaintiff and Respondent.