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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. MADISON LEANN MCLAUGHLIN, Defendant and Appellant.	2d Crim. No. B284377 (Super. Ct. No. 2015005123) (Ventura County)

Madison Leann McLaughlin pled guilty to two felony counts of conspiracy to commit shoplifting (Pen. Code,[1] § 182, subd. (a)(1)). The trial court suspended imposition of sentence and ordered her to serve three years of formal probation with terms and conditions, including 60 days in county jail. McLaughlin contends the court erred when it refused to reduce her felony convictions to misdemeanors under section 459.5. We dismiss the appeal.

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

FACTUAL AND PROCEDURAL HISTORY

In October 2014, McLaughlin and two other suspects took $696 of merchandise from a department store. Four months later, McLaughlin and another suspect took $190 of merchandise from a shoe store.

The prosecution charged McLaughlin with two felony counts of conspiracy to commit shoplifting in February 2015. The magistrate held her to answer for the charges at the conclusion of the preliminary hearing. The prosecution filed an information corresponding to the magistrate's holding order.

In November 2016, McLaughlin moved to set aside the information pursuant to section 995. She argued that the prosecution could not charge her with felony conspiracy to commit shoplifting because her conduct fell under the definition of misdemeanor shoplifting, which had been added to the Penal Code by Proposition 47 two years earlier. (See § 459.5, subds. (a) & (b).) The trial court denied the motion. McLaughlin then pled guilty to the two charges in the information. Her plea form states that she could be sentenced to county jail or home detention for up to three years eight months.

One month after McLaughlin's February 2017 plea, our Supreme Court held that "[a] defendant must be charged only with shoplifting when [section 459.5] applies" and may be subject "only [to] misdemeanor treatment for the underlying described conduct." (*People v. Gonzales* (2017) 2 Cal.5th 858, 876 (*Gonzales*).) Based on that holding, McLaughlin moved to reduce her convictions to misdemeanors. The trial court denied the motion. It suspended imposition of sentence and ordered McLaughlin to serve three years of formal probation.

McLaughlin did not seek or obtain a certificate of probable cause from the trial court. She timely filed a notice of appeal. The notice states that she is not attacking the validity of her plea.

DISCUSSION

McLaughlin contends the trial court erred when it denied her motion to reduce her felony convictions for conspiracy to commit shoplifting to misdemeanors. We conclude that we must dismiss the appeal because McLaughlin did not obtain a certificate of probable cause.

In general, a defendant who pleads guilty cannot appeal the conviction without obtaining a certificate of probable cause from the trial court. (§ 1237.5.) But a certificate is not required for an appeal based on "[g]rounds that arose after entry of the plea and do not affect the plea's validity." (Cal. Rules of Court, rule 8.304(b)(4)(B).) This permits a defendant to appeal alleged errors that occur in postplea hearings to ascertain either (1) the degree of the crime, or (2) the sentence to be imposed. (*People v. Ward* (1967) 66 Cal.2d 571, 576-577 (*Ward*).) As to the latter exception, "the critical inquiry is whether a challenge to the sentence is in substance a challenge to the validity of the plea, thus rendering [it] subject to the requirements of section 1237.5." (*People v. Panizzon* (1996) 13 Cal.4th 68, 76, italics omitted.)

Neither of the *Ward* exceptions applies here. "The crime of conspiracy is not divided into degrees." (*People v. Klinkenberg* (1949) 90 Cal.App.2d 608, 636; see § 182, subd. (a).) And McLaughlin's claim that her sentence is unlawful because *Gonzales* purportedly mandates misdemeanor treatment for conspiracy to commit shoplifting—an issue we do not decide

here—is a challenge to the validity of her plea, regardless of when it arose. (*People v. Jones* (1995) 33 Cal.App.4th 1087, 1092 ["Claims regarding the illegality of the judgment, whether on jurisdictional or other grounds, are precisely the types of claims which are covered by [section 1237.5] and require a certificate of probable cause"]; see also *People v. Zuniga* (2014) 225 Cal.App.4th 1178, 1183-1187 [compiling cases].)

People v. Buttram (2003) 30 Cal.4th 773 (*Buttram*), on which McLaughlin relies, is not to the contrary. The *Buttram* defendant agreed to plead guilty to two drug charges in exchange for a maximum sentence of six years in prison. (*Id.* at p. 777.) At sentencing, the trial court imposed the six-year term. (*Id.* at p. 779.) The defendant appealed, arguing that the court abused its discretion at sentencing by providing an inadequate statement of reasons and refusing to consider civil narcotic addict proceedings in lieu of prison. (*Ibid.*) He did not obtain a certificate of probable cause. (*Ibid.*)

Our Supreme Court held that a certificate was not required to consider the merits of the *Buttram* defendant's appeal. (*Buttram*, *supra*, 30 Cal.4th at pp. 790-791.) "When the parties negotiate a maximum sentence, they obviously mean something different than if they had bargained for a specific or recommended sentence." (*Id.* at p. 785, italics omitted.) "By agreeing only to a maximum sentence, the parties leave unresolved between themselves the appropriate sentence within the maximum." (*Ibid.*) "That issue is left to the normal sentencing discretion of the trial court, to be exercised in a separate proceeding." (*Ibid.*) Accordingly, challenges to a court's exercise of its sentencing discretion "do not constitute an attack on the validity of the plea." (*Id.* at p. 791.)

McLaughlin's plea, like that in *Buttram*, only included a maximum possible term. But unlike the *Buttram* defendant, McLaughlin does not challenge the trial court's exercise of discretion at sentencing. She instead challenges the court's authority to impose a felony sentence for conduct that, in her view, constitutes a misdemeanor. That is precisely the type of challenge the *Buttram* court distinguished (*Buttram*, *supra*, 30 Cal.4th at p. 790), and precisely the type of challenge the Supreme Court subsequently determined requires a certificate of probable cause (*People v. Shelton* (2006) 37 Cal.4th 759, 770-771 [certificate required for challenges to trial court's authority to impose a sentence]). Because McLaughlin did not obtain one, we lack jurisdiction to consider the merits of her appeal. (*Id*. at pp. 765, 771; see also *People v. Johnson* (2009) 47 Cal.4th 668, 678-679.)

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

David M. Hirsch, Judge

Superior Court County of Ventura

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