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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KERMEN BROWN,

Defendant and Appellant.

B276991

(Los Angeles County  
Super. Ct. No. BA440221)

APPEAL from a judgment of the Superior Court for Los Angeles County, Laura F. Priver, Judge. Affirmed.

Janet Uson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant Kermen Brown pled no contest to one count of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)),<sup>1</sup> and admitted a prior conviction within the meaning of section 667.5, subdivision (b). He was sentenced to four years in state prison. He filed a notice of appeal from the judgment, and his appointed counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436. We have examined the record and conclude that no arguable issues exist. Accordingly, we affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

Shortly after midnight on September 3, 2015, Los Angeles police officers observed defendant riding a bicycle in violation of statutes requiring a headlamp visible for 300 feet from the front of the bicycle and requiring a cyclist to ride near the right hand curb of the roadway. The officers attempted to make contact with defendant and ordered him to stop, but he did not comply. As defendant continued to ride away, the officers observed him reach into his waistband, remove a black object, and toss the object to the ground. The officers recognized the object to be a black revolver. The officers maneuvered their vehicle to block defendant's path and ordered him to stop and get off his bicycle, which he did.

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

<sup>2</sup> Because defendant waived his right to a preliminary hearing, the facts are based on the probation report included in the record.

The officers conducted a search of defendant and found a clear plastic bindle containing an off-white rock-like substance in one pocket, which subsequently tested positive as cocaine, and \$913 in another pocket. They also recovered the black revolver from the scene. The handgun was not loaded, and was not registered to defendant.

Defendant was charged by information with one count of possession for sale of cocaine base (Health & Saf. Code, § 11351.5) and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). The information also alleged a prior strike conviction under the Three Strikes law and prior prison term convictions under section 667.5, subdivision (b).

Defendant waived his right to a preliminary hearing and, under a plea agreement, entered a plea of no contest to count 2, possession of a firearm by a felon, and admitted one prior prison term conviction. The trial court sentenced defendant to the upper term of three years in state prison, plus one year for the section 667.5, subdivision (b) allegation, for a total term of four years.

After he was sentenced, defendant asked the trial court to order that the money that was found in his possession at the time of his arrest be returned to him. He told the court that the money, which was in denominations of \$50 and \$100 was from his Social Security check, which he had just cashed. The prosecutor opposed defendant's request, explaining that defendant had not provided any proof that the money came from cashing his Social Security check rather than from selling drugs. Defense counsel stated that she had spoken with someone at the Social Security office, but she did not have any documentation. The

court denied defendant's request, but said it would entertain a motion for the return of the money if defendant brought such a motion with proof of the Social Security payment.

Defendant timely filed a notice of appeal from the judgment, stating that his appeal was based upon matters occurring after the plea, and specifically citing ineffective assistance of counsel. In his request for a certificate of probable cause, defendant made clear that the basis for his appeal was his counsel's failure to provide the proof necessary to obtain the return of the money recovered by the police officers.

## DISCUSSION

After review of the record, defendant's court-appointed counsel filed an opening brief asking this court to review the record independently in accordance with the holding of *People v. Wende, supra*, 25 Cal.3d 436. We advised defendant that he had 30 days within which to submit any contentions or issues that he wished us to consider. We have received no response to date.

We have independently reviewed the record and conclude there are no arguable issues on appeal. To the extent defendant challenges his counsel's failure to produce at his sentencing hearing the documentation necessary for the return of the money found on defendant at the time of his arrest, we note that the trial court expressly stated that defendant could bring a motion for return of the money whenever he received that documentation. Thus, defendant has not been prejudiced by his counsel's purported failure. We conclude that defendant has, by virtue of appellate counsel's compliance with the

*Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (See *Wende, supra*, 25 Cal.3d at pp. 441-442; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-279; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

### **DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.