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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTINO VIDAL LOEZA,

Defendant and Appellant.

B279419

(Los Angeles County
Super. Ct. No. KA112626)

APPEAL from an order granting probation of the Superior Court of Los Angeles County, Wade Olson, Judge. The appeal is dismissed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Valentino Vidal Loeza purports to appeal from the denial of his suppression motion (Pen. Code, § 1538.5).¹ He also challenges the validity of his plea and admission following entry of judgment based on Loeza's plea of no contest to possession of a firearm by a felon (§ 29800, subd. (a)(1); count 1) and possession of ammunition by a felon (§ 30305, subd. (a)(1); count 2) and, as to both counts, his admission to having suffered a prior felony conviction in Los Angeles Superior Court case number KA062618. The trial court suspended imposition of sentence and placed Loeza on formal probation for a three year period under certain terms and conditions, including that he serve 90 days in jail, CALTRANS, or Tree Farm, with 10 days custody credit; he was ordered not to drive a motor vehicle unless lawfully licensed and insured; and he was not to own, use or possess any dangerous or deadly weapons.

We conclude the appeal must be dismissed for lack of a certificate of probable cause to appeal.

BACKGROUND

The evidence at the preliminary hearing established on May 23, 2016, at about 12:01 a.m., Los Angeles Police Officer Michael Weathermon, who was on vehicle patrol, noticed Loeza driving a motorcycle northbound on Sunset in West Covina while "crouched down" as if trying to race someone, which was suspicious. As he passed the officer, Loeza immediately sat up. The officer, who was proceeding southbound, made a U-turn and pulled in behind the motorcycle. Running the license plate, he discovered the motorcycle's registration was expired and conducted a traffic stop. He then cited Loeza for a suspended

¹ All further section references are to the Penal Code.

driver's license and impounded the motorcycle. During the inventory search, the officer noted the rear compartment directly behind the driver's seat was locked. Upon obtaining keys from Loeza, he opened the compartment and found a black bag that contained a ".380" handgun wrapped in a white handkerchief with seven rounds in its magazine. A live round was "floating" inside the bag.

After the Public Defender's Office was relieved for a conflict of interest, Loeza was represented at the trial level by the Alternate Public Defender's Office. Loeza completed and signed a "Felony Advisement of Rights, Waiver, and Plea Form," pursuant to which he acknowledged he "freely and voluntarily" pled no contest to the charges and admitted the allegations in the information. His counsel executed the portion of the form constituting the attorney statement.

On September 7, 2016, at the hearing on his plea, Loeza admitted he had suffered the alleged prior felony conviction in case number KA062618. The plea form was filed, and the trial court found Loeza, who was present with counsel, had been advised of and personally, explicitly, knowingly, and understandingly waived his constitutional and statutory rights and that his no contest plea to the offenses charged in counts 1 and 2 were made "freely and voluntarily." After finding a factual basis for his plea, to which counsel stipulated, the court found him guilty of the charged offenses. The court then suspended imposition of sentence and placed Loeza on formal probation under certain terms and conditions.

On October 21, 2016, Loeza himself filed a "motion to retract plead [*sic*] retainer motion 1538.5," apparently requesting

the suppression of certain evidence discovered at the time of his arrest.

At a hearing on November 15, 2016, Salvador Barajas, appearing on behalf of defense counsel Tracee May-Brewster, advised the court that after speaking with counsel and reviewing the file, he “did not see a viable claim for” “suppression of evidence on a 1538.5” basis, because the matter had been settled with the plea on September 7, 2016. At Mr. Barajas’s request, the motion was placed off calendar.

In his notice of appeal filed November 28, 2016, Loeza indicated this appeal is based on the denial of his motion to suppress evidence under section 1538.5 and also challenges the validity of his plea and admission, because “due to my disability I did not understand[,] I do not read or write and my public def. was not present[.]”

On December 1, 2016, the trial court denied Loeza’s request for a certificate of probable cause. As a result, this court on February 2, 2017, limited Loeza’s appeal to issues not requiring a certificate of probable cause.

We appointed counsel to represent Loeza on appeal. After reviewing the record, counsel filed an opening brief requesting that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. By notice filed May 10, 2017, the clerk of this court advised Loeza to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received.

DISCUSSION

We have examined the entire record and are satisfied appellate counsel has complied fully with her responsibilities and that no arguable appellate issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Wende, supra*, 25 Cal.3d at p. 443.)

We also note this appeal is inoperative. The trial court did not rule on Loeza's section 1538.5 motion, and thus, there is no order denying such motion for us to review.

Further, in the absence of a certificate of probable cause to appeal, this appeal must be dismissed. The general rule, which is factually applicable here, is that a defendant is not entitled to appeal from an order of probation or judgment of conviction entered on a no contest or guilty plea "unless he has filed in the superior court a statement of certificate grounds, which go to the legality of the proceedings, including the validity of his plea, and has obtained from the superior court a certificate of probable cause for the appeal." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) Here, the trial court denied defendant's request for a certificate of probable cause.

A certificate of probable cause is a prerequisite to proceeding with this appeal, because Loeza's challenge to his plea and admission is grounded in his claims of mental incompetency, which "are questions going to the legality of the proceedings, and, specifically, the validity of his [no contest plea]." (*People v. Mendez, supra*, 19 Cal.4th at p. 1100.) "[T]he Court of Appeal generally may not proceed to the merits of the appeal, but must order dismissal thereof, unless the defendant has filed a statement of certificate grounds as an intended notice of appeal, and has obtained a certificate of probable cause[.]" (*Id.* at

p. 1099.) Because Loeza did not obtain a certificate of probable cause, we therefore dismiss Loeza's appeal.

DISPOSITION

The appeal is dismissed for lack of a certificate of probable cause to appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

BACHNER, J.*

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