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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ARTHUR R. MORALES, Defendant and Appellant.	B283548 (Los Angeles County Super. Ct. No. LA064997)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Pastor, Judge. Appeal dismissed.

Mark Yanis, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald E. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Arthur R. Morales appeals from a judgment of conviction entered after he pleaded guilty to two counts of second degree murder. The information charged Morales with two counts of first degree murder, and specially alleged the multiple murders qualified as a special circumstance and Morales personally used a deadly or dangerous weapon in the commission of the offenses. Morales pleaded not guilty to the underlying charges and not guilty by reason of insanity. Subsequently, as part of a negotiated plea, Morales conditionally pleaded guilty to two counts of second degree murder in exchange for dismissal of the first degree murder counts and the special allegations, conditioned on his being found sane in the sanity trial. Morales did not withdraw his plea of not guilty by reason of insanity. After Morales waived his right to a jury trial, the trial court found Morales was sane at the time of commission of the offenses. In accordance with his plea, the trial court sentenced Morales to an aggregate term of 30 years to life in prison.

Morales contends on appeal his sentence violated the Eighth Amendment's prohibition on cruel and unusual punishment. Because Morales failed to obtain a certificate of probable cause pursuant to Penal Code section 1237.5,[1] we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Information*

The information charged Morales with two counts of first degree murder (§ 187, subd. (a)), of Manuel Reyes (count 1) and Rita Morales (count 2). The information specially alleged both

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

offenses together qualified as a multiple-murder special circumstance (§ 190.2, subd. (a)(3)) and that in the commission of the offense, Morales personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)).

On June 1, 2011 Morales pleaded not guilty and denied the special allegations.

B. *The Plea, Insanity Trial, and Sentence*

On September 25, 2012 Morales entered additional pleas of not guilty by reason of insanity to both counts, resulting in dual pleas of not guilty and not guilty by reason of insanity. On January 11, 2017 Morales conditionally pleaded guilty to two counts of second degree murder pursuant to a negotiated plea agreement, pursuant to which the People agreed to reduce the charges to second degree murder and dismiss the special allegations and the special circumstance allegation. Morales did not change his earlier pleas of not guilty by reason of insanity. Morales agreed to waive his right to a jury trial on the issue of sanity.

Prior to accepting Morales's change of pleas, the trial court advised Morales that if he was found sane in the insanity trial, he "could be sentenced [on the second degree murder charges] to 30 [years] to life" in state prison. The trial court confirmed with Morales that he signed a written advisement of rights, waiver, and plea form and understood everything on the form. The waiver form stated Morales understood "the [c]ourt will sentence me . . . [¶] [to] a total State Prison term of 30 years . . . ." (Boldface omitted.) It also stated Morales understood the plea agreement was for "2 counts of 2nd degree murder consecutive in exchange for [a] court trial on [the] issue of NGI." The trial court

also advised Morales that if he was found insane, he would be hospitalized in a mental institution for the rest of his life.

The trial court conducted a sanity trial and found Morales was sane at the time he committed both offenses. In accordance with the plea agreement, the trial court sentenced Morales to two consecutive terms of 15 years to life in prison, for an aggregate sentence of 30 years to life in prison.

Morales filed a timely appeal. However, it is undisputed he did not obtain a certificate of probable cause.

DISCUSSION

A. *Plea of Not Guilty by Reason of Insanity*

Section 1016 enumerates six types of pleas a criminal defendant can enter to an information, including, inter alia, a plea of not guilty, guilty, nolo contendere, and not guilty by reason of insanity. (§ 1016, subds. (1), (2), (3) & (6).) A defendant may enter dual pleas, under which he or she pleads not guilty to the substantive charges and denies any special allegations, and joins that plea with a plea of not guilty by reason of insanity. (§ 1026, subd. (a); *People v. Hernandez* (2000) 22 Cal.4th 512, 520 (*Hernandez*); *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1430 (*Dobson*).)

In cases with dual pleas, the trial court conducts a bifurcated trial in which the issues of guilt and sanity are tried separately. (§ 1026, subd. (a);[2] *Hernandez, supra*, 22 Cal.4th at

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[2] Section 1026, subdivision (a), provides: "If a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only the other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at

p. 520; *Dobson, supra*, 161 Cal.App.4th at p. 1431.) In the guilt phase of the trial, the prosecution bears the burden to prove beyond a reasonable doubt the defendant is guilty of the charged offenses. (*Dobson*, at p. 1431.) If the defendant is found guilty, in a second trial the jury determines whether the defendant was legally sane at the time of the offenses. (*Hernandez*, at p. 521; *Dobson*, at p. 1431.) The defendant bears the burden to prove by a preponderance of the evidence he or she was not sane at the time of the offense. (§ 25, subd. (b).)

Alternatively, a defendant may enter a solitary plea of not guilty by reason of insanity, by which the defendant admits the commission of the offense charged, and therefore is entitled to the same advisements as if he or she were pleading guilty. (§ 1016 ["A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged."]; *People v. Weaver* (2001) 26 Cal.4th 876, 964 ["Had defendant entered the solitary plea of not guilty by reason of insanity, he would have 'thereby admit[ted] the commission of the offense charged' [citation], requiring the court to have advised him of his *Boykin-Tahl*[3] rights before allowing him to so plead."].)

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the time the offense is alleged to have been committed. If the jury finds the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court."

3 *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

B. *Morales Was Required To Obtain a Certificate of Probable Cause To Appeal His Judgment of Conviction*

Morales contends his negotiated prison sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. The People respond that Morales cannot appeal the sentence because he failed to obtain a certificate of probable cause under section 1237.5. Morales contends the requirement to obtain a certificate of probable cause does not apply because he pleaded not guilty by reason of insanity, citing *People v. Wagoner* (1979) 89 Cal.App.3d 605 (*Wagoner*). We disagree.

Section 1237.5 provides, with limited exceptions not applicable here, that a defendant may not appeal from a judgment of conviction upon a plea of guilty or nolo contendere unless he or she obtains a certificate of probable cause from the trial court. However, because a plea of not guilty by reason of insanity "is a separate and distinct plea from either a plea of not guilty or nolo contendere," section 1237.5 does not apply to a defendant's plea of not guilty by reason of insanity. (*Wagoner, supra*, 89 Cal.App.3d at pp. 609-610; accord, *People v. Maultsby* (2012) 53 Cal.4th 296, 300 ["§ 1237.5 does not apply to insanity pleas," citing *Wagoner*].)

Morales's pleas are distinguishable from the pleas in *Wagoner*. The defendant in *Wagoner* had withdrawn his not guilty pleas and entered pleas of not guilty by reason of insanity to the two charges. (*Wagoner, supra*, 89 Cal.App.3d at p. 609.) A jury found the defendant was sane at the time of the offense, and the trial court sentenced him to state prison. (*Ibid*.) The defendant appealed from his conviction on the ground he was not fully advised of the possible penal consequences of withdrawing his not guilty pleas and pleading not guilty by reason of insanity. (*Id*. at p. 610.) The court concluded that because the defendant

appealed following a plea of not guilty by reason of insanity, he was not subject to the requirements of section 1237.5, which only apply to a plea of guilty or nolo contendere. (*Wagoner*, at pp. 609-610.)

By contrast, Morales does not appeal any aspect of his sanity trial or his pleas of not guilty by reason of insanity. Rather, he seeks relief from his conditional guilty pleas. His guilty pleas were a result of a negotiated plea agreement in which he received the benefit of a reduction in the first degree murder charges to second degree and dismissal of the special allegations. Indeed, the result in this case is no different from what would have transpired if Morales retained his not guilty pleas on the underlying charges but the trial court held his sanity trial first.[4] Had Morales waited until after the trial court found him sane to enter into the negotiated guilty pleas, there would be no question that a certificate of probable cause would have been required to appeal his conviction. We conclude the same result applies here.

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[4] Section 1016 provides that a "defendant who does not plead guilty may enter one or more of the other pleas." Under this section Morales could have maintained his not guilty pleas to the underlying charges, while pleading not guilty by reason of insanity. The parties do not raise and we do not reach whether a conditional guilty plea was consistent with section 1016's provision for a dual plea of not guilty with a plea of not guilty by reason of insanity, but not a dual plea of a conditional guilty plea with a plea of not guilty by reason of insanity.

C. *Morales's Challenge to His Sentence Is a Challenge to the Validity of His Plea, Requiring a Certificate of Probable Cause*

When a defendant challenges the sentence imposed after a guilty plea, we determine "whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*People v. Panizzon* (1996) 13 Cal.4th 68, 76 (*Panizzon*); accord, *People v. Buttram* (2003) 30 Cal.4th 773 (*Buttram*) [same].) A challenge "to the imposition of a negotiated sentence" goes to "the heart of [the] plea" and therefore constitutes a challenge to the plea itself, triggering the requirements of section 1237.5. (*Panizzon*, at p. 76.)

In *Panizzon*, the defendant agreed to plead no contest to the charges in exchange for a specific prison sentence. (*Panizzon, supra*, 13 Cal.4th at p. 74.) Although the trial court sentenced the defendant to the agreed-upon prison sentence, the defendant appealed his sentence, contending his sentence violated the Eighth Amendment's prohibition on cruel and unusual punishment. (*Panizzon*, at pp. 74-75.) The Supreme Court held that because the defendant had agreed to the sentence, his challenge was, in substance, a challenge to the validity of the plea, and therefore required a certificate of probable cause. (*Id.* at p. 79.) Because the defendant had not obtained a certificate of probable cause, the Supreme Court dismissed his appeal. (*Ibid.*)

The Supreme Court again considered whether a defendant's challenge to a sentence would require a certificate of probable cause in *Buttram*, in which the defendant agreed to a maximum sentence, but not to a specific sentence within the maximum. (*Buttram, supra*, 30 Cal.4th at p. 787.) The Supreme Court concluded that "absent contrary provisions in the plea

agreement itself," a certificate of probable cause was not required for a defendant to challenge the trial court's exercise of sentencing discretion where the negotiated plea was to an agreed upon maximum sentence. (*Id.* at pp. 790-791.) Unlike the defendant in *Panizzon*, the defendant in *Buttram* had not agreed to a specific sentence, and thus his challenge to the sentence did not attack the validity of his plea. (*Buttram*, at pp. 786-787.)

Morales's case falls squarely within the holding in *Panizzon* because Morales bargained for the specific sentence he received—two consecutive terms of 15 years to life in prison for an aggregate sentence of 30 years to life. Morales signed a waiver of rights form that made clear he understood "the [c]ourt will sentence me . . . [¶] [to] a total State Prison term of 30 years . . . ." (Boldface omitted.) Further, Morales acknowledged on the waiver form he understood the plea agreement was for "2 counts of 2nd degree murder consecutive in exchange for [a] court trial on [the] issue of NGI." Unlike in *Buttram*, the trial court did not later exercise its discretion in selecting Morales's sentence. Because Morales did not obtain a certificate of probable case, we dismiss his appeal.

DISPOSITION

The appeal is dismissed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J. ZELON, J.