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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

THE PEOPLE, Plaintiff and Respondent, v. JOHN LAPONTE, Defendant and Appellant.	B287501 (Los Angeles County Super. Ct. No. KA001795)

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven D. Blades, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

On December 20, 1989, an information charged appellant John Laponte with one count of kidnap for ransom (Pen. Code, § 209, subd. (a)[1]; count 1), one count of false imprisonment (§ 236; count 2), one count of assault with a firearm (§ 245, subd. (a)(2); count 3), and robbery (§ 211; count 4). The information further alleged as to all counts that appellant personally used a firearm (§ 12022.5). According to a plea agreement, appellant agreed to plead guilty to count 1 (amended to a violation of section 209, subd. (b)(1)),[2] and to the remaining three counts, in exchange for a promised sentence of life with the possibility of parole on count 1, and the middle term on each of the three remaining counts, to run concurrent with the life term.

At the March 21, 1990 sentencing hearing, the court found a factual basis for the plea, advised appellant of his constitutional rights and the consequences of the plea, accepted appellant's waivers and his guilty pleas and imposed sentences in accordance with the plea agreement. In addition, the court struck the firearm allegation and stayed the sentence on count 2 pursuant to section 654.

On September 9, 2016, appellant filed a motion to modify his sentence in the trial court, arguing that the sentences imposed on his convictions on counts 3 and 4 should have been stayed pursuant to section 654. On May 10, 2016, the court granted the motion, modifying the sentences on those counts. Although the abstract of judgment for the modification correctly

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

[2] The People agreed to amend the charge on count 1 to reflect a violation of section 209, subdivision (b)(1), rather than section 209, subdivision (a) because subdivision (b)(1) carried a life sentence with the possibility of parole, while subdivision (a) did not.

documented the stayed sentences, it erroneously indicated the sentence of life on count 1 as *without* the possibility of parole.

On November 1, 2017, this court granted a petition for writ of mandate (case No. B285920), ordering the correction of "the abstract of judgment to reflect the terms of petitioner's plea agreement, as modified by the superior court on May 10, 2017, which should reflect that petitioner is serving a sentence of life with the possibility of parole." On November 16, 2017, the trial court filed a corrected abstract of judgment reflecting a sentence of life with the possibility of parole on count 1, and stayed sentences on counts 2 through 4.

Appellant filed a timely notice of appeal from the judgment.[3]

We appointed counsel to represent appellant in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On May 8, 2018, we directed appointed counsel to immediately send the record on appeal and a copy of the opening brief to appellant. We notified appellant that within 30 days from the date of the notice

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[3] In an attachment to the notice of appeal, the appellant included a request for a certificate of probable cause that he served on the trial court in late December 2017. The record before this court does not contain any indication that the trial court acted on that request. We need not, however, decide the legal consequences of any failure of the trial court to rule on appellant's request because any failure to rule is harmless. As we shall explain, the trial court was not required to issue a certificate of probable cause for the claim of error raised in the application because appellant has not shown that the request was timely submitted. In any event, his challenge to the validity of his plea agreement lacks merit.

he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider.

On May 21, 2018, appellant submitted a supplemental response asserting (1) that the judgment entered in November 2017 is invalid because it violated the terms of his original plea agreement, and (2) his original sentence was "unlawful and in excess of the trial court's jurisdiction" because his original plea was invalid. Neither of appellant's assertions has merit.

First, the modified sentences, as reflected in the November 2017 corrected abstract of judgment do not offend the 1990 plea agreement; the sentences imposed on all of the counts in 2017 are identical to the sentences originally imposed pursuant to the 1990 plea agreement. The only difference between the original judgment and the corrected judgment is that, at appellant's request, the court ordered the execution of the sentences imposed on counts 3 and 4 stayed under section 654. Appellant has not articulated to this court how the application of section 654 to his sentences on counts 3 and 4 violated his original plea agreement or results in any prejudice.

Second, appellant's effort to attack his original judgment by assailing its validity is also without merit. Preliminarily, his attack on his plea is untimely. A request for a certificate of probable cause must be brought within 60 days after the rendition of the judgment of conviction upon a plea of guilty or nolo contendere. (See § 1237.5; Cal. Rules of Court, rule 8.308(a); *People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) The judgment upon appellant's plea was entered in April 1990 and, thus, the time to seek an application for a certificate of probable cause, in this case, expired almost 28 years ago. Appellant maintains, however, that he is entitled to attack the validity of his 1990 plea now because the corrected judgment rendered in November 2017 is an "[i]ntervening judgment" which effectively "reinstated"

his right to assert an otherwise untimely attack on his plea. We disagree. Appellant cites no relevant authority[4] to support his claim that the 2017 judgment revives the right to attack his original plea, nor has our research revealed support for that argument. Indeed, where as here, the attack on the plea agreement is based entirely on circumstances that occurred in 1990, when the original judgment was entered; a new attack on a nearly 30-year-old plea has no basis in the existing law or principles of equity. Appellant has not explained why he did not attack the validity of his plea back in 1990, nor has he articulated how the 2017 judgment or any other events or facts that occurred after 1990 support this challenge to the plea agreement. Thus, in this case, the trial court would have properly rejected appellant's request for a certificate of probable cause as untimely sought, if it had ruled on it.

In any event, even if the trial court had issued a certificate of probable cause, appellant's attack on his plea fails on the merits. Here, concerning his assertion that his "original sentence imposed was unlawful and in excess of the trial court's

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[4] The federal case law cited in appellant's request—*Magwood v. Patterson* (2010) 561 U.S. 320, 331-332 and *Wentzell v. Neven* (2012) 674 F.3d 1124, 1126—interpret provisions of the Anti–Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C.A. § 2253, governing the circumstances under which a habeas corpus petitioner must obtain leave of the court of appeals to file a "second or successive" habeas petition in the federal district court. (See *Magwood v. Patterson, supra,* 561 U.S. at pp. 331-332 [holding that AEDPA limitations on successive habeas petitions applies only to a second application challenging the same state court judgment; the statute does not require the petitioner to seek court permission of the appellate court to file a habeas petition when the state court modifies or amends a criminal judgments].)

jurisdiction," appellant claims that his original plea was invalid because it was not authorized by the prosecutor. He points out that although he (and his counsel) signed the document that outlined the terms of the 1990 plea agreement, the prosecutor failed to sign the form. Appellant, therefore, reasons the plea deal was unauthorized, should not have been presented to the court, and thus the trial court had no jurisdiction to accept the plea. Appellant's argument is problematic because the plea deal presented, and accepted by all of the parties, including the prosecutor at the hearing, was identical to terms of the agreement outlined in the form. Consequently, any error on the prosecutor's part in failing to execute the form was cured by the prosecutor's subsequent endorsement of and agreement to the terms of the plea deal at the sentencing hearing. Accordingly, appellant's substantive attack on the plea agreement and the resulting judgment rendered based on the agreement fails.

Our review of the remainder of the record discloses no arguable issues that warrant appellate review or that require further briefing, and we are satisfied that appellant's attorney has fully complied with her responsibilities. (*People v. Wende, supra,* 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.) Accordingly, the judgment is affirmed.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

ROTHSCHILD, P.J.

We concur:

CHANEY, J.

JOHNSON, J.