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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. ILEX HARRIS, Defendant and Appellant.	B259125 (Los Angeles County Super. Ct. No. PA081261)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathryne A. Stoltz, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Ilex Harris appeals from the judgment entered following her negotiated plea of no contest to possession of a controlled substance (cocaine). (Health & Saf. Code, § 11350, subd. (a).) The court sentenced appellant to county jail for a total of 16 months. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The record reflects that on July 16, 2014, Los Angeles police arrested appellant on a misdemeanor warrant and found cocaine on her person. Based on the incident, a felony complaint filed on July 18, 2014, alleged appellant possessed a controlled substance, i.e., cocaine, in violation of Health and Safety Code section 11350, subdivision (a). The complaint also alleged appellant had suffered three prior felony convictions (each for a violation of Health and Safety Code section 11350, subdivision (a)) for which she had served separate prison terms (Pen. Code, § 667.5, subd. (b)). On July 18, 2014, appellant, represented by counsel, waived arraignment and pled not guilty.

On July 28, 2014, after appellant was advised of the nature and consequences of her plea, and was advised of, and waived, her constitutional rights, appellant, represented by counsel, pled no contest as previously indicated with the understanding she would be incarcerated for 16 months in the county jail.

Appellant entered the no contest plea on a form entitled, "Felony Advisement of Rights, Waiver, and Plea Form" (some capitalization omitted; hereafter, form) and orally in open court. In the form, appellant initialed boxes next to paragraphs indicating as follows. Appellant was "freely and voluntarily" pleading no contest to the charge. Prior to entering her plea, appellant had a full opportunity to discuss with her counsel various matters pertinent to the charge.

Appellant also initialed boxes next to paragraphs indicating the following. Appellant was offering her no contest plea "freely and voluntarily and with full understanding of all the matters set forth in the pleading and in this form." No one "ha[d] made any threats, . . . or made any promises to [appellant], except as set out in [said] form, in order to convince [appellant] to plead . . . no contest." Appellant was stipulating there was a factual basis for her plea, and she was pleading no contest "to take advantage

of a plea bargain. (*People v. West*)." Appellant was "not taking any medication, or under the influence of any substance, or suffering from any medical condition, that is or [might] be impairing [appellant's] ability to enter into [said] plea agreement." Appellant had no further questions of the court or her counsel regarding her plea.

The section of the form entitled, "Defendant's Signature" (some capitalization omitted) had preprinted language stating, inter alia, "I have read and initialed each of the paragraphs above and discussed them with my attorney. My initials mean that I have read, understand and agree with what is stated in the paragraph." On July 28, 2014, appellant signed and dated the section.

Pursuant to the agreement, the court, on July 28, 2014, dismissed the Penal Code section 667.5, subdivision (b) allegations and sentenced appellant to county jail for a total of 16 months pursuant to Penal Code section 1170, subdivision (h). After sentencing appellant, the trial court told appellant her counsel "did a great job . . . because you got less time than the last time you committed this offense. That almost never happens. Okay? [¶] The Defendant: Yes, ma'am. [¶] The Court: So that is like a miracle. [¶] The Defendant: Yes, ma'am." The court also advised appellant that if she wanted to participate in a drug program, she could voluntarily do so without court-ordered participation.

On August 19, 2014, appellant filed a notice of appeal. In the notice, appellant, by check mark, indicated, "This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)" Appellant did not there indicate what those "sentence or other matters" were.

Also attached to the notice is a form entitled, "Request for Certificate of Probable Cause" (hereafter, request; some capitalization omitted). In it, appellant declared, "I took a plea bargain because I have seizures and was ill as well as my attorney stating he'd make sure I went to the penitentiary for three (3) years if I didn't. [¶] I am requesting a drug treatment program." At the bottom of the request is a section permitting the trial

court to indicate whether it has granted or denied the request. The section is blank, i.e., the record does not contain a certificate of probable cause.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed April 1, 2015, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments she wished this court to consider. No response has been received to date.

As mentioned, appellant complained in her request that "I took a plea bargain because I have seizures and was ill as well as my attorney stating he'd make sure I went to the penitentiary for three (3) years if I didn't." This is a certificate issue, i.e., it pertains to the legality of the proceedings and, in particular, appellant's no contest plea. The record does not contain a certificate of probable cause. We may not consider the merits of the above certificate issue. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096-1097, 1099 (*Mendez*); Cal. Rules of Court, rule 8.304(b).)

Appellant also stated, "I am requesting a drug treatment program." Appellant is effectively claiming the trial court erroneously failed, in the exercise of its discretion, to order appellant to participate in a drug program. To the extent appellant thereby challenges her no contest plea, this is a certificate issue we may not consider for want of a certificate. (*Mendez*, *supra*, 19 Cal.4th at pp. 1096-1097, 1099.) To the extent this is a noncertificate issue, appellant waived it by raising it for the first time on appeal. (Cf. *People v. Tillman* (2000) 22 Cal.4th 300, 302-303; *People v. Saunders* (1993) 5 Cal.4th 580, 590.) Even if appellant did not waive the issue, the trial court did not abuse its discretion by failing to impose such an order, because its absence left appellant free to participate voluntarily in such a program without judicial involvement.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

KITCHING, J.

We concur:

EDMON, P. J.

ALDRICH, J.