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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KENYON DARRELL BROWN,

Defendant and Appellant.

E079710

(Super.Ct.No. FSB1600204)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone, Judge. Affirmed.

Kenyon Darrell Brown, in pro. per.; Edward Mahler, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Kenyon Darrell Brown appeals from the San Bernardino County Superior Court's denial of his motion to vacate his conviction. We will affirm.

BACKGROUND

In 2016, defendant pled no contest to a felony violation of Penal Code¹ section 69 (resisting an executive officer) and a misdemeanor violation of subdivision (b) of Vehicle Code section 23152 (driving under the influence). He was sentenced pursuant to that agreement in September 2016.

In July 2022, defendant moved to vacate the conviction on the grounds he had been suffering a mental disorder at the time, the arresting officer lied, an officer's testimony was tossed out by the trial court, and there was no DNA blood taken to establish he was driving under the influence. The court summarily denied defendant's motion, finding the reporter's transcript of the preliminary hearing provided a factual basis for defendant's plea. Defendant timely submitted a handwritten notice of this appeal along with a handwritten request for resentencing in an unidentified but clearly unrelated matter involving a conviction for animal cruelty and a deadly weapon enhancement. Defendant's notice did not include a certificate of probable cause.

DISCUSSION

Defendant's appointed appellate counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), which sets forth statements of the case and facts but does not present any issues for adjudication. The brief includes a request that we independently review the record on appeal. Counsel also suggests a potentially arguable

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

issue: whether the trial court erred when it summarily denied defendant's motion to vacate his conviction long after his case was final.

Counsel acknowledges our Supreme Court's opinion in *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*), which held that *Wende* procedures do not apply in no-issue appeals from a summary denial of section 1172.6 resentencing petitions but did not specifically address the issue whether *Wende* procedures should continue to be employed in no-issue appeals from other types of post-conviction proceedings. In his brief, counsel explained he had not found any published authority addressing the question and posited that *Wende* procedures were appropriate in this case because *Delgadillo* should be limited to no-issue appeals from section 1172.6 proceedings.

This court received defendant's handwritten supplemental brief before the clerk undertook to send him a "*Delgadillo* order."² In his brief, defendant challenges the validity of his plea agreement. His claims include the following: (i) the charges against him should have been amended following the preliminary hearing; (ii) one of the police officers who testified against him gave false testimony; (iii) there was no blood test to establish he was driving under the influence; (iv) he lacked specific intent to commit the

² That order would have alerted defendant of this court's extension of *Delgadillo* to include no-issue appeals taken from post-conviction proceedings in addition to those involving section 1172.6 petitions by advising him (i) that this court is not required to conduct an independent review of the record on appeal, and (ii) that his failure to file a supplemental brief within 30 days could result in dismissal of his appeal as abandoned.

offenses he was charged with because he was “5150” on the day he was arrested; and (v) a general complaint that the plea bargain was “made up” of false evidence.

We cannot review the issues defendant raises in his supplemental brief because he did not obtain a certificate of probable cause. Section 1237.5 provides in relevant part that defendants may not appeal a judgment of conviction based upon a plea of nolo contendere unless they first obtain a certificate of probable cause from the trial court attesting there are reasonable grounds for the appeal. Moreover, defendant’s plea agreement specifically included a waiver of his right to appeal from any motion he could bring and from the conviction and judgment in his case since he was getting the benefit of his plea bargain. He is, therefore, precluded from raising any issue that challenges the propriety of the plea, including the waiver of his right to appeal, because he did not obtain a certificate of probable cause. (*People v. Buttram* (2003) 30 Cal.4th 773, 776; *People v. Espinoza* (2018) 22 Cal.App.5th 794, 797.)

In view of defendant’s reasonable explanation for filing a brief pursuant to *Wende* instead of *Delgadillo*, and because we did not advise defendant that we are not required to review the record, we exercised our discretion to conduct an independent review of the record on appeal. (*Delgadillo, supra*, 14 Cal.4th at p. 232 [courts of appeal are not required to independently review the record in a section 1172.6 appeal but may exercise its discretion to do so].) We found no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

SLOUGH
J.