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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO MOYA ALVAREZ,

Defendant and Appellant.

A129449

(Sonoma County
Super. Ct. No. SCR-577801)

Defendant Adolfo Moya Alvarez appeals following entry of judgment on his negotiated no contest plea to five counts of selling methamphetamine and one count of using a minor to complete a drug sale. (Health & Saf. Code, §§ 11379, subd. (a), 11380, subd. (a).) Defendant's appointed counsel on appeal reviewed the record of this case, did not identify any trial court errors, and asked this court for an independent review of the record to determine if any arguable issues exist for review on appeal. (*Anders v. California* (1967) 386 U.S. 738, 744; *People v. Kelly* (2006) 40 Cal.4th 106, 119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) Defendant was advised that he could file a supplemental brief with this court raising any issues he wished to call to our attention, and defendant did not file a brief. We have reviewed the record and, finding no errors or arguable issues for review, affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

According to the probation officer's report, an undercover detective purchased methamphetamine from defendant on five separate occasions from December 2009 to

February 2010. On one of those occasions, defendant used a 13-year-old child to translate from Spanish to English when making arrangements for the sale. The sales were conducted in the carport area of defendant's apartment building. After the fifth purchase on February 1, 2010, a search warrant was executed at defendant's home and he was arrested. The search uncovered suspected methamphetamine, plastic baggies, a digital scale, a calculator, and \$728 in cash. Defendant was a day laborer who earned no more than \$300 a week.

A felony complaint was filed on February 3, 2010, charging defendant with five counts of selling methamphetamine and one count of using a minor to complete a drug sale. (Health & Saf. Code, §§ 11379, subd. (a), 11380, subd. (a).) A codefendant was charged with defendant on one of the drug sale charges. Defendant was appointed counsel and, at his scheduled arraignment on February 8, 2010, entered an initial plea of not guilty.

A preliminary hearing was held on March 8, 2010, at which defendant was represented by counsel and assisted by a Spanish interpreter. A narcotics detective was examined and cross-examined about controlled drug purchases between defendant and the police. The court found sufficient evidence to hold defendant on the charged offenses.

On March 18, 2010, an information was filed charging defendant with the same crimes previously alleged in the complaint: five counts of selling methamphetamine and one count of using a minor to complete a drug sale. (Health & Saf. Code, §§ 11379, subd. (a), 11380, subd. (a).) Defendant pleaded not guilty. Trial was set for April 2010.

On the trial date, April 28, 2010, the prosecutor noted that he had made an offer for a negotiated disposition and the offer remained open. Defense counsel said that defendant was "unable to make a decision and now he wants another lawyer." The court conducted a hearing to give defendant an opportunity to explain why he wanted different counsel. (*People v. Marsden* (1970) 2 Cal.3d 118, 122-124 (*Marsden*).)

Defendant was assisted by a Spanish interpreter at the *Marsden* hearing. The court said to defendant: "Tell me what your concerns are about [defense counsel]

Mr. Villarreal's representation?" Defendant said that defense counsel was pushing him to make a decision about the plea offer. The court told defendant that the pressure he was feeling was due to the fact that the case was set for trial that day, so a timely decision was necessary. Defense counsel confirmed that the court understood the situation and said that if counsel was pressuring defendant, he was pressuring him only to make a decision. The court explained to defendant that the decision whether to enter a guilty or no contest plea rested with defendant, not defense counsel, and that defendant was entitled to a jury trial. Defendant said, "I don't want a trial." The court explained that if he did not want a trial and wanted to enter a negotiated plea then "today is the day" because trial was set to proceed. Defendant said he would plead guilty if the court did not send him to prison because his family needed him. The court explained that the prosecutor's offer was for a maximum six years in prison and the court might consider less time depending upon the content of the presentence report. The court also told defendant that further discussion of the plea offer would have to include the prosecutor, and the present *Marsden* hearing concerned whether defendant was, in fact, requesting substitute counsel. The court asked defendant if he had anything else that he wanted the court to know about the situation with his attorney and defendant stated no complaints or concerns.

When general proceedings resumed, defendant said he wanted to enter no contest pleas to the charges against him instead of going to trial. Defendant initialed and signed a waiver of constitutional rights form, written in Spanish. The four-page form set forth the charges filed against him, listed and explained defendant's constitutional rights, and confirmed defendant's waiver of those rights. The document also explained that defendant faced a maximum prison sentence of 13 years and, in exchange for his plea, the court would not sentence him to more than 6 years. The document also listed various consequences of his plea, including possible deportation. The court repeated these explanations and advisements verbally in open court, with the assistance of a Spanish interpreter. Defendant said he understood the charges. Defendant waived his constitutional rights and entered pleas of no contest to all charges.

A felony presentence report was prepared recommending denial of probation and a prison sentence of eleven years. In the report, the probation officer noted that “[t]he manner in which the crimes . . . were carried out demonstrates criminal sophistication and professionalism on the part of the defendant, in that he engaged others to act as ‘lookouts’ and/or packaged methamphetamine in boxes such as a crayon box and a cigarette box to conceal the nature of their contents.” The report listed defendant’s prior criminal activity, which included drug possession in 1999, and stated: “The defendant has been trafficking [in] drug sales in our community for several months that we know about, and even utilized a 13-year old minor child during at least one transaction. Not only is his extensive involvement in drug sales detrimental to our community, his recruitment and grooming of an innocent child [in drug sales] is despicable.”

The court denied probation and sentenced defendant to an aggregate prison term of six years. The court imposed the mid-term six-year sentence for the crime of using a minor to complete a drug sale, and concurrent mid-term sentences of three years each on the five counts of selling methamphetamine. (Health & Saf. Code, §§ 11379, subd. (a), 11380, subd. (a).) The court awarded 124 days of custody credit plus an equal number in conduct credit, for a total credit of 248 days.

II. DISCUSSION

Neither appointed counsel nor defendant has identified any issue for our review. We have independently reviewed the entire record and find no errors or arguable issues for review. (*Anders v. California*, *supra*, 386 U.S. at p. 744; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441-443.) Defendant was represented by counsel throughout the proceedings, and provided with the assistance of a Spanish interpreter. The court conducted a *Marsden* hearing when it appeared that defendant might have had a conflict with counsel, and the hearing clarified that counsel was providing effective representation. Defendant was simply concerned about whether to accept a plea bargain before trial began, and the court fairly and fully explained defendant’s options in that regard. Defendant’s plea was entered after full advisement of his constitutional rights,

and was entered into freely and voluntarily. The court sentenced defendant to six years. The sentence was selected after the court fully considered defendant's prior history and the circumstances of the present offenses. The sentence is statutorily authorized, within the stipulated range of punishment set by the plea bargain, and a proper exercise of the court's discretion.

III. DISPOSITION

The judgment is affirmed.

Sepulveda, J.

We concur:

Ruvolo, P. J.

Rivera, J.