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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DARRELL NELSON CARADINE, Defendant and Appellant.	A130302 (Mendocino County Super. Ct. No. SCUK-CRCR-10-12122)

Darrell Nelson Caradine (appellant) appeals from a judgment entered after he pleaded no contest to transportation of a controlled substance (methamphetamine) (Health & Saf. Code, § 11379, subd. (a)[1]). Appellant's counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and requests that we conduct an independent review of the record. Appellant was informed of his right to file a supplemental brief and did not file such a brief. Having independently reviewed the record, we conclude there are no issues that require further briefing, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed May 20, 2010, charging appellant with transportation of a controlled substance (methamphetamine) (Health & Saf. Code, § 11379, subd. (a), count 1), possession of methamphetamine for sale (§ 11378, count 2), possession of a dangerous weapon, i.e., "a flashlight modified to be a sap, blackjack, mace" (Pen. Code, § 12020, subd. (a)(1), count 3), and a misdemeanor violation of driving when privilege is

[1] All further statutory references are to the Health and Safety Code unless otherwise stated.

suspended or revoked (Veh. Code, § 14601.1, subd. (a), count 4). The information also alleged that appellant had served a prior prison term (Pen. Code, § 667.5, subd. (b)) for possession of stolen property (Pen. Code, § 496, subd. (a)) and had been convicted of a violation of Vehicle Code section 14601.1 on five prior occasions.

The information was based on an incident in which Mendocino County Sheriff's Office deputy Derek Hendry approached appellant, who had an active warrant. Appellant, who was in his car at a fast food restaurant drive-thru, complied with Hendry's request to step out of his car. The exchange had caused traffic in the drive-thru to "back up," so "Agent Hoyle" got in appellant's car and pulled it to the shoulder of the road. After parking the car, Hoyle told Hendry that while inside the car, he smelled marijuana and saw an open 24-ounce container of alcohol. Hendry asked appellant if he had any other illegal substances in his car, and appellant responded, "No." Hendry searched the car and found a used methamphetamine pipe, and on the front passenger seat a small plastic container "like you get out of a vending machine" with a top that was clear but had been colored with a dark marker. Inside the container were two clear sandwich baggies containing a blue substance that Hendry identified as crystal methamphetamine. The baggies weighed a total of 5.7 grams and their contents tested positive for methamphetamine. Hendry opined that the amount of methamphetamine in each baggie and the way it was packaged indicated appellant possessed the methamphetamine for sale. Inside the trunk of appellant's car, Hendry found a clean glass pipe wrapped in bubble wrap and a flashlight on which an approximately nine-inch piece of parachute cord with a grip handle was attached. Hendry seized the flashlight because the cord and handle were attached to the "non bulb-burning end" of the flashlight and it appeared its only use was as a weapon.

Appellant pleaded no contest to transporting a controlled substance, methamphetamine (§ 11379, subd. (a), count 1), with the understanding that he could be

sentenced to prison for up to four years. The court dismissed the remaining charges.[2] The trial court denied appellant's request for probation and sentenced him to the aggravated term of four years, stating, "I appreciate your statement today that drug addiction has fueled a lot of your criminality and that at some point you are just sick of it and you want to improve life for yourself, your new partner and your young child. [¶] On the other hand, your absolute abysmal criminal record is something that . . . is impossible for the Court to overlook. You not only have numerous driving offenses but you have multiple misdemeanor violence convictions, you have a child endangerment. You have, now, two felony drug charges of which you have been convicted. I understand that your addiction to some extent could be deemed a mitigating factor or factor that warrants some consideration by the Court. But the weight of the record is something that I think cannot justify probation nor is your recent conduct indicative of someone who possibly could be successful on probation. [¶] The Court would note you are on three grants of probation at the time that you committed this third felony. You have an open misdemeanor that I intend to sentence you on and you were selling methamphetamine.[3] It is just not a situation that is good for the community or a situation that the Court can understand why probation would be appropriate." The court also denied probation in the other action, terminated appellant's probation in two other cases, and ordered appellant to serve concurrent time with the felony conviction in each of the two other cases.

The court also found that appellant was addicted, or in danger of becoming addicted, to drugs, and directed the probation department or the district attorney to prepare a petition for commitment to the California Rehabilitation Center. The court imposed a restitution fine of $800, stayed a parole revocation fine of $800 and awarded appellant 72 actual days plus 72 conduct days, for a total of 144 days of credit. Appellant

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[2] On the same date, appellant also pled guilty to a misdemeanor violation of battery (Pen. Code, § 242) in another case and the court dismissed the remaining charges in that action.

[3] Later, the court said, "You have always said you haven't sold, sir. But that's sure what it looks like from the report."

filed a timely notice of appeal and requested a certificate of probable cause, which was denied.

DISCUSSION

Appellant's counsel discovered no issues meriting argument but suggests we might consider whether the trial court erred in denying his request for probation and whether defense counsel was ineffective in failing to move to suppress the evidence obtained during the search of appellant's car. We conclude there was no error. The court did not err in denying probation based on appellant's past behavior while on probation and his extensive criminal record, which included two felony drug convictions, multiple misdemeanor violence convictions, and numerous driving offenses.

Further, in order to prevail on a claim of ineffective assistance of counsel, appellant must show that his attorney's performance "fell below an objective standard of reasonableness under prevailing professional norms" and that "counsel's deficient representation prejudiced the defendant, i.e., there is a 'reasonable probability' that, but for counsel's failings, defendant would have obtained a more favorable result." (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541, citing *Strickland v. Washington* (1984) 466 U.S. 668, 687, 694, and *In re Wilson* (1992) 3 Cal.4th 945, 950.) Here, the initial stop and arrest were proper because there was an active warrant, and the search occurred at the time of arrest. Thus, Hendry's search of appellant's car was proper. (See *New York v. Belton* (1981) 453 U.S. 454, 460 [when an officer lawfully arrests "the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile" and any containers therein].) Because appellant cannot show he was prejudiced by counsel's failure to move to suppress evidence, his ineffective assistance of counsel claim fails.

The record shows appellant entered his guilty plea freely and voluntarily and that there was a factual basis for the plea. Appellant was adequately represented by counsel at every stage of the proceedings. There was no sentencing error. There are no issues that require further briefing.

DISPOSITION

The judgment is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.