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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

BAYARDO JOSE ESCOBAR,

Defendant and Appellant.

A130640

**(San Mateo County
Super. Ct. No. SC068856A)**

Bayardo Jose Escobar appeals from a judgment sentencing him to prison for an eight-year aggregate term after he pled no contest to possessing methamphetamine for sale and admitted three enhancement allegations for prior narcotics convictions. (Health & Saf. Code, §§ 11378, 11370.2, subd. (c).) His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). She has also provided the court with correspondence from appellant in which he sets forth what he believes to be grounds for relief. We find no arguable issues and affirm.

I. FACTS AND PROCEDURAL HISTORY¹

In December 2008, officers from the San Mateo Police Department approached appellant after receiving a report that he was involved in selling drugs. He discarded two plastic baggies containing a little over 20 grams of methamphetamine, an amount

¹ Because appellant entered a no contest plea, the facts of the offense are taken from the preliminary hearing.

indicative of possession for sale. Appellant appeared to be under the influence of a stimulant and was carrying \$306 in cash. He was taken into custody and admitted using methamphetamine about twice a week.

Following a preliminary hearing, the district attorney filed an information charging appellant with a felony count of possessing methamphetamine for sale under Health and Safety Code section 11378 and a misdemeanor count of using a controlled substance under Health and Safety Code section 11550, subdivision (a). The information also contained special allegations under Penal Code section 1203.07 restricting probation eligibility, enhancement allegations under Health and Safety Code section 11370, subdivision (c) for prior narcotics convictions, and prison prior enhancement allegations under Penal Code section 667.5, subdivision (b).

In November 2010, following a number of continuances, appellant agreed to plead no contest to the possession for sale count, to admit three enhancement allegations under Health and Safety Code section 11370.2, subdivision (c), and to admit violating his probation in two previous cases. The written change of plea agreement stipulated that appellant would be sentenced to an eight-year prison term as a result of his plea, that the remaining misdemeanor count and enhancement allegations would be dismissed, that his probation in the previous cases would be terminated, and that pending charges in a separate case would be dismissed.

The court accepted appellant's no contest plea after advising him of his constitutional rights to a jury trial, to confront the witnesses against him, and against self-incrimination. It imposed the eight-year agreed-upon term, consisting of the two-year middle term for the violation of Health and Safety Code section 11378 and three years each on two of the enhancements under Health and Safety Code section 11370.2, subdivision (c).

II. *DISCUSSION*

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appointed counsel has filed a *Wende/Anders* brief raising no issues. After being advised of his right to file a supplemental brief, appellant wrote two letters to his counsel

(dated March 1 and March 3, 2011) setting forth what he believes to be grounds for relief on appeal. Having considered those letters as supplemental briefs and having independently reviewed the entire record for potential error, we find no grounds for reversal or modification.

Appellant has not sought or obtained a certificate of probable cause and cannot challenge the validity of his plea on appeal. (Pen. Code, § 1237.5.) In any event, the court properly advised appellant of his constitutional rights and the consequences of his plea and imposed the stipulated term. Appellant received appropriate presentence custody and conduct credits under Penal Code section 4019.

In his supplemental briefing, appellant complains that the information did not properly allege that the prior convictions on which the enhancements were based were felonies. He also suggests the prior conviction allegations were not adequately proven. Having admitted the enhancement allegations, appellant has waived any challenge to defects in the pleadings or the sufficiency of the evidence. (*People v. Herrera* (1967) 255 Cal.App.2d 469, 471.)

Based on our review of the record and appellant's supplemental briefing, we are satisfied that appellant's appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

III. *DISPOSITION*

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.