ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. WILLIAM FREDERICK MAULTSBY, Defendant and Appellant.

S182042

Court of Appeal, Third Appellate District, No. C060532
Yolo County Superior Court No. 08868

Hon. Thomas Warriner, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

This reply brief will focus only on specific contentions made by the Attorney General and will not attempt to reiterate arguments already addressed in the opening brief on the merits. Failure to reiterate arguments previously raised does not constitute an abandonment of those issues.

ARGUMENT

PENAL CODE SECTION 1237.5 DOES NOT APPLY TO AN APPEAL FROM JUDGMENT ENTERED FOLLOWING TRIAL BY JURY; THIS COURT SHOULD REMAND FOR CONSIDERATION OF THE APPEAL ON THE MERITS

In Appellant's Opening Brief on the Merits,[1] appellant argued that he was not required to obtain a certificate of probable cause to raise on appeal a claim that his admissions regarding prior conviction allegations were not knowingly and intelligently made, because he was convicted by jury of the underlying offense and his right to appeal was thus governed by Penal Code section 1237 rather than by section 1237.5. In response, the Attorney General concedes that the plain language of section 1237.5 does not apply to an appeal from a conviction following a jury trial, but argues that the legislative intent behind that statute supports extending the certificate of probable cause requirement to the instant case. (Reply Brief on the Merits[2], p. 4.) Respondent's argument is not supported by the available legislative history or by this court's prior interpretations of the relevant statutes. Moreover, respondent fails to establish how applying the requirements of Penal Code section 1237.5 to a jury trial appeal that includes an admission of a prior conviction allegation would further the legislative intent of conserving judicial resources. This court should reverse the holding of the Court of Appeal.

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[1]Hereinafter, "AOBM."

[2]Hereinafter, "RBM."

As already discussed at length in the opening brief, the plain language of the relevant statutes does not support respondent's contentions. Section 1237.5 applies only to "a judgment of conviction upon a plea of guilty or nolo contendere" or an admitted probation violation. (Pen. Code, § 1237.5.) Section 1237, by contrast, applies specifically to appeals "[f]rom a final judgment of conviction except as provided in Section 1237.1 and Section 1237.5." (Pen. Code, § 1237.) Neither statute mentions admissions of special allegations, including prior conviction allegations.

Respondent contends that the words "plea" and "admission" are sometimes used interchangeably, and cites Rule 5.778 of the California Rules of Court as an example. (RBM 13.) But this example establishes the very point respondent attempts to counter, because the language of that statute does not use "admission" and "plea" interchangeably, but rather includes both terms to indicate that the rule applies to both admissions and pleas. In truth, the Legislature has habitually distinguished between guilty or no contest pleas and other types of admissions. (See, e.g., Pen. Code, § 1016, § 1019, § 1025, subd. (a), § 1158.)

In fact, as noted by respondent in the lengthy legislative history included in the Reply Brief on the Merits, the Legislature amended section 1237.5 in order to specify that the statute should apply to admitted probation violations as well to guilty pleas. (Stats. 1976, ch. 1128, § 1 (S.B. 1820); see RBM 6.) Although respondent cites this as evidence that admissions were intended

all along to be included under the rubric of section 1237.5, the legislative history quoted in respondent's brief clearly indicates that the Legislature intended to "eliminate" a previously existing right to appeal from an admitted probation violation without a certificate of probable cause. (Stats. 1976, ch. 1128, § 1 (S.B. 1820); see RBM 6-7.) In short, had the Legislature intended for appeals from admissions to prior conviction allegations to be included among the types of appeals limited by section 1237.5, the Legislature could and would have expressly so stated.

In attempting to concoct legislative intent from plain language that clearly evinces the opposite intent, respondent claims repeatedly that the goal of conserving judicial resources is served by apply the strictures of section 1237.5 to situations such as that in the case at bar. (RBM, 16-17.) Respondent never explains exactly how it is that requiring a certificate of probable cause would save any resources at all in a case such as this one, however. A superior court clerk processing a notice of appeal is not equipped to parse through the record and determine which issues will be arguable on appeal; moreover, this court has held that such issue parsing is not the purpose of section 1237.5. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1177.) Instead, when a defendant files a notice of appeal under section 1237 in a case in which the conviction is by trial before the court or jury, the record on appeal will be prepared, counsel will be appointed, and judicial resources will be expended accordingly. The nominal "savings" will not occur until appellate counsel determines that an arguable issue exists

regarding the admission of a special allegation, at which time counsel will either need to take steps to obtain constructive filing of a request for a certificate of probable cause (*In re Chavez* (2003) 30 Cal.4th 643; *In re Benoit* (1973) 10 Cal.3d 72, 86-87), or if such relief is not available and no other arguable issues exist, submit the case for a full review under *People v. Wende* (1979) 25 Cal.3d 436.

This procedure, hardly a cost-saving process by any measure, demonstrates the inapplicability of section 1237.5 to an appeal following a trial. Simply grafting the requirements of section 1237.5 on to a subset of appeals normally governed by section 1237 would do nothing to conserve resources. The two-tiered system of appeals for guilty pleas, as defined by the Legislature and the Rules of Court, and as described and outlined by this court in *People v. Hoffard* (1995) 10 Cal.4th 1170 and *People v. Jones* (1995) 10 Cal.4th 1102, is entirely different from the procedure envisioned by the respondent and endorsed by the Third District in the instant case and in *People v. Fulton* (2009) 179 Cal.App.4th 1230. "In the case of a judgment of conviction following a plea of guilty or no contest, section 1237.5 authorizes an appeal only as to a particular category of issues and requires that additional procedural steps be taken." (*In re Chavez, supra*, 30 Cal.4th at p. 650.) These additional steps, as defined by section 1237.5 and by Rule 8.304, serve to weed out wholly frivolous guilty plea appeals before the record is prepared and before appellate counsel is appointed. (*In re Chavez, supra*, 30 Cal.4th at p. 653;

see also *People v. Mendez* (1999) 19 Cal.4th 1084, 1095; *People v. Panizzon* (1996) 13 Cal.4th 68, 75-76.)

Section 1237.5 sets forth the certificate of probable cause requirement. Rule 8.304 governs the sole exception to that requirement, permitting an appeal from a guilty or no contest plea in cases in which the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 or on grounds that arose after entry of the plea and do not affect the plea's validity. (Rule 8.304, subd. (4).) Because the notice of appeal must comply with one or the other of these provisions, it is possible to screen out noncompliant appeals before significant judicial resources have been expended: the superior court clerk may simply examine the notice of appeal to determine whether it complies with one of the provisions, and the notice of appeal does not so comply, the record need not be prepared and the appeal will not proceed.

An appeal from judgment following a trial operates differently. In such a case, the defendant is not required to specify the issues that will be raised on appeal; the defendant need only file the notice of appeal within the applicable time limit, and the appeal will proceed. (*People v. Mendez, supra,* 19 Cal.4th 1084, 1094.) "No statute or rule purports to restrict criminal appeals to issues stated in the notice of appeal." (*People v. Jones, supra*, 10 Cal.4th at p.1109.) Thus, in an appeal from judgment imposed following a trial, the record will be prepared, counsel will be appointed, and judicial resources will accordingly be expended

long before any determination is made regarding whether an arguable issue exists regarding an admission of a special allegation. Grafting the certificate of probable cause requirement onto this process does nothing to promote judicial economy, and respondent fails to explain how such grafting furthers the legislative intent behind section 1237.5.

Much of respondent's argument is premised on the notion that Maultsby's admission of the prior conviction allegation in this case was the result of a "negotiated bargain." (RBM 19.) Respondent goes so far as to suggest that this "bargain" resulted in the prosecution reducing the charged offense from petty theft with a prior conviction (Pen. Code, § 666) to simple petty theft (Pen. Code, § 484). (RBM 19.) In so characterizing the prior conviction admission in this case, respondent misconstrues the proceedings below and muddies the issues before this court.

As explained in detail in the briefing before the Court of Appeal, appellant initially sought to bifurcate the trial of his prior convictions from the trial on the petty theft with a prior charge; that request was granted without objection. (RT 13.) Appellant's trial counsel then requested that the court alter the wording of the charges to the jury, so that the jury would only hear that appellant was charged with a petty theft, without hearing the allegation that he had suffered a prior conviction for a theft-related offense. (RT 13-18.) The court was reluctant to make this alteration, agreeing to omit the list of prior conviction allegations in reading the charge to the jury "because I think that has a

profoundly negative impact, perhaps, on the jury," but declining to omit mention of prior convictions in general, finding that the prior conviction was an element of the crime that by necessity must be presented to the jury. (RT 16.)

Relying on this court's opinion in *People v. Bouzas* (1991) 53 Cal.3d 467, appellant argued that he was entitled to admit the prior conviction allegations in order to prevent them from being mentioned to the jury. (CT 49-51.) Following submission of briefing on the matter, and the eventual agreement of the prosecutor, appellant admitted the prior conviction allegations in order to keep them from being presented to the jury. (RT 22-23.) The sole benefit that he received from this admission was compliance with this court's holding in *Bouzas*, which held that a defendant was entitled to "stipulate" to a prior conviction allegation under Penal Code section 666 in order to keep the fact of his prior conviction from the jury. (*People v. Bouzas, supra,* 53 Cal.3d at p. 480.)

Respondent characterizes this proceeding as follows: "In return, the prosecutor agreed to modify the information and reduce count I from petty theft with a prior conviction to petty theft." (RBM 19.) This statement is simply incorrect. The charge remained petty theft with a prior conviction (Pen. Code, § 666), and appellant was in fact convicted of that offense and accordingly sentenced to prison. (CT 114.) The admission of the priors merely kept the jury from learning about the prior convictions while they deliberated the current charges, a procedure to which appellant

was entitled in any event under this court's holding in *Bouzas.* (*People v. Bouzas, supra,* 53 Cal.3d at p. 480.)

In short, the proceedings below did not result from a negotiated plea agreement, nor would it make any difference if they had. The statutes governing appeals, whether from guilty pleas or from judgments following trials, do not purport to require an examination of the issues that may be raised on appeal, but instead govern only whether an appeal is *operative*. (*People v. Hoffard, supra,* 10 Cal.4th at p. 1177; *People v. Jones, supra*, 10 Cal.4th at p. 1109.) Appellant's appeal was operative under Penal Code section 1237. This court must therefore reverse the Court of Appeal's order dismissing the case, and remand for consideration on the merits.

CONCLUSION

For the foregoing reasons, and for reasons already stated in the opening brief on the merits, appellant requests that this court reverse the holding of the Court of Appeal and remand the matter for a determination on the merits.

Dated: February 11, 2011

Respectfully submitted,

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As required by California Rules of Court, Rule 8.520(c), I certify that this brief contains 2,528 words, as determined by the word processing program used to create it.

Elizabeth Campbell
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DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 1215 K Street, 17th Floor, Sacramento, California, 95814.

On February 14, 2011, I served the attached

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by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2011, in Sacramento, California.

DECLARANT