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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAVARN CAVERS,

Defendant and Appellant.

A129830

(San Francisco City & County  
Super. Ct. No. 211733)

**I. INTRODUCTION**

In this appeal, we apply the Supreme Court’s recent decision in *People v. Sanchez* (2011) 53 Cal.4th 80 (*Sanchez*). In *Sanchez*, the court reiterated that a *Marsden*<sup>1</sup> hearing is required only when “there is ‘at least some clear indication by defendant,’ either personally or through his current counsel, that defendant ‘wants a substitute attorney’ ” (*Sanchez*, at p. 90, quoting *People v. Lucky* (1988) 45 Cal.3d 259, 281, fn. 8 (*Lucky*)) and disapproved the practice of appointing “conflict” counsel.

Defendant Lavarn Cavers was found guilty by a jury of felony assault and battery with great bodily injury and use of a deadly weapon, and misdemeanor battery. His appointed counsel made no posttrial motions, but advised the trial court defendant wished to make several motions. Defendant stated he believed he had to make the motions to preserve the issues for appeal. The court allowed defendant to state his motions on the record, including a motion for “re-trial” based on claimed ineffective assistance of counsel. The court also made defendant’s written notes from which he read his motions

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

“defense exhibit A for sentencing.” Neither defendant, nor his appointed counsel, “clearly indicated” defendant wanted substitute counsel, that is, that he wanted his current attorney relieved as counsel of record and a new attorney appointed for all future representation in the trial court. Accordingly, we therefore reject defendant’s claim of *Marsden* error and we therefore affirm the judgment.

## II. BACKGROUND

We discuss only those facts pertinent to this appeal. In May 2010, a jury found defendant guilty on the following charges: felony assault with a great bodily injury (Pen. Code, § 245, subd. (a)(1)), battery with serious bodily injury (Pen. Code, § 243, subd. (d)), and misdemeanor with battery (Pen. Code, § 242). The jury also found true a deadly weapon allegation in connection with count 2. In a bifurcated proceeding, the trial court also found true a prior prison term allegation.

At the outset of the sentencing hearing, the trial court asked whether there was any legal cause why the court should not proceed with sentencing and entry of judgment. Defense counsel responded, “No,” but then stated defendant had “a statement that he would like to make that he has written out.” The court asked whether defendant wished to present the written statement as an “exhibit.” Counsel responded he wished “to say it on the record” and then added defendant “also has some motions he would like to make.” The court inquired of counsel, “[W]hat motions are these?” Defense counsel stated she believed one was “for ineffective assistance of counsel” and the other was “based on evidence.”

The court then told defendant: “Well, Mr. Cavers, you’re welcome to file your motion. The court will not rule on your motion. It may be . . . [the] basis for an appeal. [¶] . . . [¶] But a motion for—I’m not sure what your motion would be because at this point, ineffective assistance of counsel would be an issue for appeal, and—not for the trial court.” Defendant responded it was his understanding he had to “make these motions now, otherwise, they are not grounds for an appeal . . . *so that’s why I want to state for the record my motions now.*” (Italics added.) The court replied: “You certainly may state them. What I have indicated is I don’t believe that it’s appropriate for the court

to make a ruling on—on a motion to find defendant’s counsel inadequate or incompetent at this point in the trial. But you make your motion, and we’ll file it, and that will be . . . an issue for appeal.”

Defendant proceeded to explain the basis for his first motion “to overturn the jury’s guilty verdict and enter a verdict of not guilty,” including for improper jury instructions and “perjured” testimony by the victim. He next stated “he would like to set aside the prior convictions” on the ground his plea was entered under duress and he had been a law abiding citizen for four years. He then stated: “I would like to make a motion for re-trial due to ineffective counsel.”

As to the latter, defendant complained of a “lack of counsel to visit,” counsel’s failure to “provide me with the police report,” with “preliminary transcripts,” and the “probation report,” and counsel’s “lack of diligence” and failure “to call the witnesses for evidence.” Defendant asserted there was an out-of-state witness who had been victimized by the victim in this case, and claimed his counsel should have secured a statement from this individual and obtained a commission compelling this individual’s attendance at trial. He also claimed his counsel had not adequately attacked the victim’s credibility with his prior criminal history or with “a statement on commission of the out-of-state victim.” Defendant additionally asserted his counsel should have called as witnesses the medical examiner who first examined him at the county jail and the physician who treated him at the county hospital. Defendant maintained these witnesses would have supported his claim of self defense. He similarly claimed his medical records and photographs taken 72 hours after he was incarcerated should have been presented as evidence. He also claimed his counsel failed to raise timely objections on motions and failed to make discovery inquiries about and to object to the admission into evidence of the chair he allegedly used against the victim—although he ultimately admitted he “didn’t have an issue with the chair being issued into evidence.”

Following this statement, the court inquired: “Do you have this—is this a written motion, or is this an oral motion?” Defendant responded, “This is an oral motion.” Defense counsel then pointed out defendant had “this all written out” and asked if the

court would accept it. The court stated it would “accept it as an exhibit. It’s a motion that the defendant himself wishes to have heard at this time. I think that ought to be part of the record.” The court accordingly had the written statement marked “as defense exhibit A for sentencing.”

Defense counsel then advised: “Just so the record is clear, *this does serve as a notice that he intends to file—[¶] . . . [¶] an appeal.*” (Italics added.) The court, in turn, reiterated it “is not going to rule on the matter. You have an attorney, and your attorney is responsible for—for making motions during trial or after trial. However, it will be noted that you have made the motions on the record, and that they are now part of the record.”

Defendant responded: “I tried to get my attorney to make these motions for me, and for some reason, she didn’t. I’m not clear as to why not, but I have been for a month trying . . . to get my attorney to make these motions. I have written her letters. I am indigent. So I couldn’t call her. Until recently, she gave me a number where I could make collect calls, but I’ve been trying to get these motions filed, and write—and to some reason [*sic*], she hadn’t done it, and so that’s why I am presenting them myself to make sure they are on the record.”

This triggered the following colloquy between defense counsel and the court:

Defense counsel: “Your Honor, I informed Mr. Cavers that I could not help him write a motion for my ineffective assistance of counsel. I told him he would be entitled to have another attorney appointed to raise that issue.”

Court: “All right.”

Defense counsel: “I don’t know timing—wise when that should have happened.”

Court: “It would seem to me that it would be appropriate to proceed with the sentencing, and that any review of counsel’s deficiencies or—or for that matter, the court’s, would be subject to [re]view by an Appellate Court.”

Defense counsel did not disagree or voice any objection to this comment. The court then proceeded with sentencing, ultimately sentencing defendant to a total of seven years in state prison.

### III. DISCUSSION

#### *Marsden Hearing*

##### *Legal Overview*

“ “[A] *Marsden* hearing is . . . an informal hearing in which the court ascertains the nature of the defendant’s allegations regarding the defects in counsel’s representation and decides whether the allegations have sufficient substance to warrant counsel’s replacement.” [Citation.]’ [Citation.]” (*People v. Gutierrez* (2009) 45 Cal.4th 789, 803, quoting *People v. Alfaro* (2007) 41 Cal.4th 1277, 1320.) The decision to permit a defendant to discharge his appointed counsel and substitute another attorney during the trial is within the trial court’s discretion, and a defendant generally has no absolute right to more than one appointed attorney. (*Marsden, supra*, 2 Cal.3d at p. 123.) Nevertheless, “ “[a] defendant is entitled to . . . [new appointed counsel] if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations].’ [Citations.]” ’ [Citation.]” (*People v. Barnett* (1998) 17 Cal.4th 1044, 1085 (*Barnett*)).

“When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney’s inadequate performance. [Citation.] ‘ “Although no formal motion is necessary, there must be ‘at least some clear indication by defendant that he wants a substitute attorney.’ ” [Citations.]’ ” (*People v. Richardson* (2009) 171 Cal.App.4th 479, 484 (*Richardson*); see also *Lucky, supra*, 45 Cal.3d at p. 281 [“a trial court’s duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises when the defendant in some manner moves to discharge his current counsel”].)

In *People v. Smith* (1993) 6 Cal.4th 684 (*Smith*), the Supreme Court explained a *Marsden* motion may be brought not only during trial, but also after trial, for example, prior to moving for a new trial or to withdraw a plea on the basis of inadequate representation. (*Smith*, at pp. 692-696.) Specifically, the court addressed whether

different standards apply to preconviction and postconviction requests for substituted counsel. Confusion had arisen because of language in *People v. Stewart* (1985) 171 Cal.App.3d 388 (*Stewart*),<sup>2</sup> that a defendant need make only a “colorable claim” of inadequate representation to be entitled to appointment of new counsel for preparation of a new trial motion based on ineffective assistance of counsel. (*Smith, supra*, at pp. 693-694.) The Supreme Court held “the standard expressed in *Marsden* and its progeny applies equally preconviction and postconviction.” (*Id.* at p. 694.) “A defendant has no greater right to substitute counsel at the later stage [of a criminal case] than the earlier.” (*Ibid.*)

The Supreme Court also reiterated “[w]hen a *Marsden* motion is granted, new counsel is substituted for all purposes in place of the original attorney, who is then relieved of further representation.” (*Smith, supra*, 6 Cal.4th at p. 695.) “We are unaware of any authority supporting the appointment of simultaneous and independent, but potentially rival, attorneys to present the defendant.” (*Ibid.*; see also *People v. Hines* (1997) 15 Cal.4th 997, 1024-1025 (*Hines*) [holding defendant not entitled to substitute counsel to assist him in making a *Marsden* motion; “*Smith* holds only that [where an adequate showing is made] the trial court should *replace* the defendant’s existing counsel with a new attorney; it does not suggest that a defendant should ever be simultaneously represented by two attorneys, one of whom is challenging the other’s competence”].)

The Supreme Court recognized in *Smith* “that when a defendant claims after trial or guilty plea that defense counsel was ineffective, and seeks substitute counsel to pursue the claim, the original attorney is placed in an awkward position.” (*Smith, supra*, 6 Cal.4th at p. 694.) But no more so than when such claims are made preconviction, and whether preconviction or post, the conflict between defendant and counsel engendered by such claims “is unavoidable.” (*Ibid.*) The court also recognized appointment of substitute counsel “for the purpose of arguing that previous counsel was incompetent, without an adequate showing by defendant, can have undesirable consequences.” (*Id.* at

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<sup>2</sup> *Stewart, supra*, 171 Cal.App.3d 388, disapproved in part in *People v. Smith, supra*, 6 Cal.4th at page 694.

p. 695.) “The spectacle of a series of attorneys appointed at public expense whose sole job, or at least a major portion of whose job, is to claim the previous attorney was, or previous attorneys were, incompetent discredits the legal profession and judicial system, often with little benefit in protecting a defendant’s legitimate interests.” (*Ibid.*)

Accordingly, “[t]he court should deny a request for new counsel at any stage unless it is satisfied that the defendant has made the required showing”—that “the first appointed attorney is not providing adequate representation or that the defendant and the attorney have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.” (*Smith, supra*, 6 Cal.4th at p. 696.) This determination “lies in within the exercise of the trial court’s discretion, which will not be overturned on appeal absent a clear abuse of discretion.” (*Ibid.*)

In *Barnett, supra*, 17 Cal.4th 1044, the Supreme Court elaborated on its holding in *Smith*. The defendant in *Barnett* made repeated objections to his representation, including filing a written “objection” to defense counsel “resting” in the guilt phase of the bifurcated death penalty trial and asking to represent himself. (*Barnett*, at p. 1100.) The trial court held an in camera hearing during which the court summarized “some 24 issues” in the written objection and defense counsel responded to many of them. (*Id.* at pp. 1100-1101.) The court denied the *Faretta* motion.<sup>3</sup> (*Barnett*, at p. 1101.) During argument and deliberations in the guilt phase, the defendant continued to object to his representation, which the trial court continued to construe as *Faretta* motions and denied. (*Barnett*, at p. 1102.) On the first day of trial in the guilt phase, the defendant filed a written *Marsden* motion but orally stated he intended to make another *Faretta* motion, reiterating his complaints about counsel and which the court denied. (*Barnett*, at p. 1103.) The defendant made two more *Marsden* motions during the penalty phase, and at the last of the hearings, submitted a new trial motion which the court “annexed” to the new trial motion submitted by counsel. The court “agreed to consider the ineffectiveness claims therein as part of the *Marsden* motion.” (*Barnett*, at p. 1104.) The trial court

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<sup>3</sup> *Faretta v. California* (1975) 422 U.S. 806, 818 (*Faretta*).

subsequently denied the *Marsden* motion, denied the defendant's request for another attorney to assist in presenting his new trial motion because he had not "demonstrated a colorable claim of ineffectiveness of counsel," and also denied the balance of the defendant's "motion in propria persona for a new trial." (*Barnett*, at pp. 1104, 1113, fn. 46.) The Supreme Court ruled the trial court did not abuse its discretion in denying the string of *Faretta* motions the defendant made after trial commenced or the *Marsden* motions the defendant made during the guilt phase of the trial. (*Barnett*, at pp. 1104-1111.)

The court also rejected the defendant's claim that "he was entitled to appointment of separate counsel to assist in presenting the 'ineffectiveness assistance aspects of his new trial motion.'" (*Barnett, supra*, 17 Cal.4th at p. 1112.) "He is wrong," stated the court. (*Ibid.*) "Although a defendant may seek and obtain . . . substitute counsel at any stage of the proceeding in the trial court (*People v. Smith, supra*, 6 Cal.4th at pp. 695-696), a defendant is not entitled to simultaneous representation by two attorneys, one of whom is challenging the other's competence (*People v. Hines, supra*, 15 Cal.4th at p. 1024)." (*Ibid.*) Accordingly, the trial "court did not err in refusing appointment of separate counsel for that limited purpose." (*Ibid.*)

The court additionally rejected the defendant's assertion he was "entitled to substitution of counsel in view of *People v. Stewart* (1985) 171 Cal.App.3d 388 . . . , which suggested that new counsel *must* be provided at the postconviction stage when a defendant seeks a new trial based upon counsel's incompetence and has made a 'colorable claim' involving counsel's conduct outside the courtroom." (*Barnett, supra*, 17 Cal.4th at p. 1112.) The court explained that in *Smith* it had concluded "the burden for obtaining appointment of substitute counsel, as expressed in *Marsden* and its progeny [citations], applies equally to preconviction and postconviction." (*Barnett*, at p. 1112.) In so concluding, the court had "examined" *Stewart* and "rejected the notion that its 'colorable claim' language supports either a greater right to substitute counsel or a reduced burden of proof at the postconviction stage than at any earlier point." (*Barnett*, at p. 1112.)

Accordingly, the Supreme Court held in *Barnett* that the trial court correctly applied the standard articulated in *Marsden* to the defendant's postconviction assertion of inadequate representation. It also concluded the trial court properly denied the defendant's request for substitute counsel, including "[t]o the extent the request also incorporated the ineffectiveness claims contained in defendant's new trial motion." (*Barnett, supra*, 17 Cal.4th at p.1113.)

While the Supreme Court in *Smith* and *Barnett* recognized the propriety of postconviction *Marsden* motions for substituted counsel to pursue new trial motions based on ineffective assistance of counsel and clarified that the standard for appointing substituted counsel is the same pre and postconviction, the court did not address whether a defendant's stated desire to make a new trial motion based on claimed ineffective assistance of counsel, alone, must be construed as a request for substitute counsel, triggering a *Marsden* hearing. Over the ensuing years, the Courts of Appeal split on the question. A number of appellate courts also implicitly approved the appointment of "conflict" counsel to investigate whether a defendant had a basis to make a new trial motion or withdraw a plea based on alleged ineffective assistance of counsel.

In *Sanchez*, the Supreme Court addressed the question on which the Courts of Appeal were split and also addressed the common practice of appointing "conflict" counsel. The defendant in *Sanchez* had entered into a change of plea pursuant to a negotiated disposition. (*Sanchez, supra*, 53 Cal.4th at pp. 83-84.) At the sentencing hearing, appointed counsel advised the trial court the defendant " 'wished' " to have the public defender " 'explore having his plea withdrawn' " (*Id.* at p. 85.) The trial court asked if this was something counsel could do, or whether it had to appoint "conflict" counsel. (*Ibid.*) Appointed counsel responded "conflict" counsel could not be appointed until the court held a *Marsden* hearing, found the public defender " 'did not give competent advice' " and declared a "conflict." (*Sanchez*, at p. 85.) Counsel then asked for time to determine whether the public defender needed to withdraw. (*Ibid.*) The trial court gave counsel a week to determine " 'whether or not conflict counsel needs to be appointed . . . or [whether] you need to file a motion on his behalf as his representative.' "

(*Ibid.*) At the next hearing, the trial court appointed “conflict” counsel “ ‘for the sole purpose of looking into the motion to withdraw [defendant’s] plea.’ ” (*Ibid.*) When “conflict” counsel reported he found no basis for such a motion, the trial court confirmed the public defender’s continued representation of defendant and proceeded with sentencing. (*Ibid.*) The Court of Appeal reversed, finding *Marsden* error. (*Id.* at p. 86.) The Supreme Court affirmed the appellate court’s judgment.

The Supreme Court reiterated that a *Marsden* hearing is required only when “there is ‘at least some clear indication by defendant,’ either personally or through his current counsel, that defendant ‘wants a substitute attorney.’ ” (*Sanchez, supra*, 53 Cal.4th at pp. 89-90, quoting *Lucky, supra*, 45 Cal.3d at p. 281, fn. 8.) The court then determined defense counsel had so indicated (*id.* at p. 92), by requesting the “ ‘appointment of substitute counsel to investigate the filing of a motion to withdraw [the] plea on Sanchez’s behalf.’ ” (*Sanchez*, at p. 86.) “[D]efendant, through counsel, requested that a ‘conflict’ or substitute attorney be appointed immediately, and the obvious implicit ground for that request was the incompetency of defendant’s currently appointed counsel.” (*Id.* at p. 91.) Accordingly, the court agreed with the Court of Appeal that the trial court should have conducted a *Marsden* hearing to determine whether or not appointed counsel should be relieved and substitute counsel appointed. (*Sanchez*, at pp. 92-93.)

While the Supreme Court agreed with the Court of Appeal that defense counsel had given a sufficiently clear indication defendant wanted a new lawyer, triggering a *Marsden* hearing, the court expressly disapproved other cases decided by that appellate court<sup>4</sup> and also *Sanchez* to the extent they “incorrectly implied that a *Marsden* motion can be triggered with something less than a clear indication by a defendant” or his counsel that the defendant “ ‘wants a substitute attorney.’ ” (*Sanchez, supra*, 53 Cal.4th at p. 90, fn. 3, quoting *Lucky, supra*, 45 Cal.3d at p. 281, fn. 8.) In these disapproved cases, the appellate court had implicitly, if not explicitly, held a defendant’s expressed desire to

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<sup>4</sup> *People v. Mendez* (2008) 161 Cal.App.4th 1362 (*Mendez*); *People v. Mejia* (2008) 159 Cal.App.4th 1081 (*Mejia*); *People v. Eastman* (2007) 146 Cal.App.4th 688.

make a new trial motion or motion to withdraw a plea on the basis of claimed ineffective assistance of counsel, without more, should be treated as a *Marsden* motion, triggering *Marsden* hearing requirements. (See, e.g., *Mejia, supra*, 159 Cal.App.4th at p. 1086 [although defendant made no request for substitute or even “conflict” counsel, court nevertheless concludes he made a *Marsden* motion because he “instructed his counsel to move for a new trial largely on the basis of his counsel’s performance at trial and that his counsel so informed the trial court”].)

The Supreme Court also specifically disapproved of the practice of appointing “conflict” counsel. Such counsel would enter the case only to determine whether the defendant had grounds to seek relief on the basis of ineffective assistance of counsel and, if he or she determined such grounds existed, to pursue such relief. At the same time, previously appointed defense counsel remained counsel of record for all other trial court matters. (*Sanchez, supra*, 53 Cal.4th at pp. 84-85, 88-89.) The court agreed with the Court of Appeal that “ ‘[t]he proper procedure [under *Marsden*] does not include the appointment of “conflict” or “substitute” counsel to investigate or evaluate the defendant’s proposed new trial or plea withdrawal motion.’ ” (*Id.* at p. 89.) As did the appellate court, the Supreme Court viewed use of such specially appointed counsel as an abandonment by the trial court of *its* responsibility to hear ineffective assistance of counsel claims and exercise of *its* discretion to determine whether substitute counsel should be appointed. (*Id.* at pp. 89-90.)

***No “Clear Indication” Defendant Wanted “Substitute” Counsel***

As we have recited in the factual background, defendant here “did not clearly indicate” he wanted his counsel relieved and substitute counsel appointed. (See *People v. Dickey* (2005) 35 Cal. 4th 884, 920.) While he expressed a desire to make several new trial motions, including one on the basis of ineffective assistance of counsel, he explained he believed he needed to make the motions “now, otherwise, they are not grounds for an appeal . . . so that’s why I want to state for the record my motions now.” (Italics added.)

Defendant never made any request in connection with his representation, even after the trial court stated, “You have an attorney, and your attorney is responsible for –

for making motions during trial and after trial.” At that juncture, defendant could have made it clear he wanted a new lawyer (substitute counsel), or he wanted to represent himself (*Faretta*), or—given the common practice at the time—he wanted separate counsel (“conflict” counsel) to determine whether there was a basis for a new trial motion on the basis of inadequate representation. But he made none of these requests, and absent some clear indication he wanted a new lawyer, there can be no *Marsden* error. (*Sanchez, supra*, 53 Cal.4th at pp. 89-90; see also *People v. Valdez* (2004) 32 Cal.4th 73, 96-97 [while defendant complained about his defense and argued additional witnesses should be questioned, he “neither requested a *Marsden* hearing by name nor did he ask for counsel to be replaced”]; *Smith, supra*, 15 Cal.4th at pp. 1024-1025 [defendant “did not ask the trial court to appoint independent counsel to assist him in making his *Marsden* motion” nor was he entitled to such]; *People v. Gay* (1990) 221 Cal.App.3d 1065, 1067-1069 [where defendant made pro se new trial motion based on enumerated acts of claimed ineffective assistance of counsel, but never asked for appointment of new counsel to prepare or argue the motion, *Marsden* hearing not required; defendant’s “nine-page motion contain[ed] not one reference to any desire for substitute counsel”].)

Nor did defendant’s counsel give any clear indication, on defendant’s behalf, that defendant wanted a new lawyer. Rather, after defendant told the trial court he was making his multiple new trial motions because he thought he had to do so to preserve the issues on appeal, defense counsel stated: “Just so the record is clear, this does serve as a notice that he intends to file . . . [court interrupts, ‘Yes.’] . . . an appeal.” Counsel then told the trial court she had informed defendant she could not help him write a new trial motion based on ineffective assistance of counsel and told him “he would be entitled to have another attorney appointed to raise that issue.” But she did not “know timing-wise when that should have happened.” The trial court responded it seemed “appropriate to proceed with the sentencing, and that any review of counsel’s deficiencies . . . would be subject to [re]view by an Appellate court.” Counsel did not disagree, and in fact, made no response at all. Instead, she immediately turned to sentencing issues.

On these facts, we cannot say the trial court erred in failing to detect “a clear indication” by defense counsel that defendant wanted her relieved as counsel of record and a new lawyer appointed in her stead. (Compare *Sanchez, supra*, 53 Cal.4th at p. 91 [“defendant, through counsel, requested that a ‘conflict’ or substitute attorney be appointed immediately”]; *People v. Reed* (2010) 183 Cal.App.4th 1137, 1145-1146 (*Reed*) [combination of defendant’s “expressed desire to pursue a motion for new trial based on counsel’s incompetence, the fact that defense counsel said, ‘I cannot make it for him,’ and the context of [the defendant’s] prior unsuccessful *Marsden* motions, made it sufficiently clear that [he] was in fact requesting substitute counsel to pursue the motion for new trial”].)<sup>5</sup>

We therefore conclude there was no *Marsden* error.

#### IV. DISPOSITION

The judgment is affirmed.

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Banke, J.

We concur:

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Marchiano, P. J.

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Margulies, J.

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<sup>5</sup> To the extent *Reed* suggests a *Marsden* hearing is triggered merely by a defendant’s expressed desire to make a new trial motion on the basis of ineffective assistance of counsel, without more (see *Reed, supra*, 183 Cal.App.4th at pp. 1146-1147 [citing the disapproved decisions in *Mendez* and *Mejia*]), it has also been effectively disapproved by *Sanchez*. (*Sanchez, supra*, 53 Cal. 4th at p. 90, fn. 3 [expressly identifying *Mendez* and *Mejia* as incorrectly implying a *Marsden* hearing can be triggered by something less than a “clear indication” the defendant wants a “substitute attorney”].)