

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES T. McCROHAN,

Defendant and Appellant.

A132939

(Sonoma County  
Super. Ct. No. SCR587388)

Defendant James T. McCrohan appeals from a judgment entered after his plea of no contest to one count of driving a vehicle with a blood alcohol content of .08 percent or more (Veh. Code, § 23152, subd. (b)), as a felony, and his admissions to enhancement and sentencing allegations. He was sentenced to a stipulated term of two years in state prison with presentence custody credit of 592 days. On appeal he argues the court failed to rule on his motion to withdraw his plea, and therefore, the matter should be remanded for a ruling on the motion. However, we conclude that by abandoning his motion to withdraw his plea, defendant forfeits appellate review of his claim of error by the trial court. Accordingly, we affirm the judgment.

**FACTS<sup>1</sup>**

Shortly after midnight on July 10, 2010, defendant drove his van over a raised center divider on Old Redwood Highway in Petaluma. The van sustained two flat tires. After defendant left the van, an eyewitness noticed that defendant “smell[ed] like

<sup>1</sup> The facts are taken from the transcript of the preliminary hearing held on February 4, 2011, and the other undisputed court documents and proceedings.

alcohol” and had slurred speech. A police officer made the same observations. In response to the officer’s questions, defendant admitted he had one beer and he refused to submit to any field sobriety testing at the scene. The officer arrested defendant for driving under the influence of alcohol. About an hour after his arrest, defendant submitted to a blood alcohol test and a preliminary alcohol screening test that showed his blood alcohol content to be .18 percent and .19 percent, respectively.

After a preliminary examination, the district attorney filed an information charging defendant with the felony offense of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol) (count one), and the felony offense of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol content of .08 percent or more) (count two). As to each count, it was alleged that at the time of the offense defendant was driving with a blood alcohol content of over .15 percent, and that defendant had three prior convictions for violating Vehicle Code section 23152, subdivision (a), which were punished as felonies.

On May 5, 2011, defendant entered a plea of no contest to count two and admitted to the enhancement and sentencing allegations relating to that count. In exchange for the plea, it was agreed that the remaining count and related allegations would be dismissed, and defendant was promised a stipulated sentence of two years in state prison. In response to the court’s questions, defendant indicated he had reviewed the plea form carefully with his counsel, he had read and understood each statement that he had initialed on the form, and he understood the constitutional rights he was waiving by entering a plea. Defendant also indicated that no one had forced him or threatened him to enter a plea, he was doing so freely and voluntarily, and he was not under the influence of any medication that would affect his ability to think clearly that day. After counsel indicated there was a factual basis for the plea and the related allegations, the court accepted defendant’s plea and admissions, finding them to be “knowing, intelligent, and voluntary.”

A week later, on May 12, 2011, defendant appeared in court with his attorney of record. At that time, counsel stated defendant wanted to ask the court to “schedule” a

motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). When the court asked defendant if he was requesting a *Marsden* hearing, defendant replied: “Yes, your Honor. I’m requesting a motion to withdraw the plea based on *Marsden* issues and mental competency issues. And if we could set up some sort of hearing where I can have my psychiatrist subpoenaed for the day that I pled. She saw me for an hour. I think that would be very relevant to your decision. . . . [¶] Also, the second bifurcated part of the motion to withdraw would be ineffective assistance of counsel.” The court responded: “Let me just start. Here’s the thing, you still have a lawyer representing you, so I’m going to have your lawyer speak for you. I haven’t granted a *Marsden*. I will set this for a *Marsden* hearing. . . .”

On the afternoon of May 12, 2011, the court held a *Marsden* hearing after confirming that defendant was requesting that his attorney of record be relieved and substitute counsel be appointed to represent defendant. In response to the court’s query, defendant set forth his reasons for his dissatisfaction with his current attorney, and expressed “worries” about his mental state immediately before and on the day of the plea proceeding. Defense counsel responded to defendant’s complaints regarding counsel’s representation and counsel noted his perception of defendant’s mental state on the day of the plea proceeding. At the end of the hearing, the court informed defendant that the only issue before the court was his *Marsden* motion for new counsel. “And in terms of any other kind of motion having to do with whether you . . . want to keep the original disposition which was offered to you, which was two years, or if you want to do a motion to withdraw your plea or something, that’s a different issue.” When defendant indicated he thought “it was combined here,” the court replied, “No.” The court informed defendant that if he did move to withdraw his plea, he could end up with either more prison time or the same prison time, and defendant acknowledged that he understood those consequences. The court then denied defendant’s *Marsden* motion, finding that defense counsel had provided adequate representation.

About a month later, on June 9, 2011, the court imposed the stipulated sentence of two years in state prison with presentence custody credit of 592 days. Defendant filed a

timely notice of appeal and the trial court granted defendant's request for a certificate of probable cause.

## DISCUSSION

Defendant's sole contention on appeal is that the trial court erred—and violated his constitutional rights—when it failed to rule on his motion to withdraw his plea at the May 12, 2011, hearing. According to defendant, he had “clearly, unambiguously, and expressly made a motion to withdraw his plea,” and “his entire argument was focused on such a motion” during the hearing. However, the trial court treated the motion as a *Marsden* motion for new counsel, and never ruled on the motion to withdraw his plea. He therefore asks us to remand the matter for a ruling on the motion actually made by him. As we now discuss, we conclude defendant's argument is unavailing.

“[W]hen a criminal defendant indicates after conviction a desire to withdraw his plea on the ground that his current counsel provided ineffective assistance of counsel,” and, as in this case, “there is ‘at least some clear indication by defendant,’ either personally or through his current counsel, that defendant ‘wants a substitute attorney,’ . . .” “a trial court is obligated to conduct a *Marsden* hearing on whether to discharge counsel for all purposes and appoint new counsel” before it proceeds to determine a substantive motion to withdraw the plea. (*People v. Sanchez* (2011) 53 Cal.4th 80, 89-90.) Thus, the trial court correctly informed defendant both before and after the May 12, 2011, hearing that it would first resolve the matter of his counsel's representation before considering any request to withdraw the plea.

At the conclusion of the May 12, 2011 hearing, the trial court explicitly indicated it was not then ruling on defendant's request to withdraw his plea. Defendant did not then ask the court to rule on his motion to withdraw his plea based on his arguments made at the hearing. And, at no time thereafter did defendant, either personally or through counsel, renew his request to withdraw his plea by filing a motion or asking the court to rule on his motion based on his arguments made at the May 12, 2011, hearing. Consequently, we conclude defendant abandoned his request to withdraw his plea, thereby forfeiting any appellate claim of error by the trial court. (See *People v. Vera*

(2004) 122 Cal.App.4th 970, 982 [defendant abandoned unstated complaints about counsel by not accepting court's invitation to present them at a later hearing].<sup>2</sup>

**DISPOSITION**

The judgment is affirmed.

---

McGuiness, P.J.

We concur:

---

Pollak, J.

---

Jenkins, J.

---

<sup>2</sup> In light of our determination, we do not address the parties' other contentions.