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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN ARGUETA,

Defendant and Appellant.

A133797

(San Francisco City and County
Super. Ct. No. 213918)

Defendant Ruben Argueta appeals from the trial court's denial of his motion to withdraw his plea, brought pursuant to Penal Code section 1018 (section 1018). The court ruled that it did not have jurisdiction to consider his motion. Defendant seeks reversal of this ruling on the ground that the trial court does have jurisdiction and asks that we remand this matter to the trial court for further proceedings. The People argue the trial court's ruling was correct and should be affirmed.

Defendant's opening brief argument is contradicted by the plain language of section 1018 and appellate court precedent. We disregard his new contention and argument in his reply brief because they are tardily made without a showing of good cause. Therefore, we affirm the judgment.

BACKGROUND

In October 2010, the San Francisco County District Attorney filed a complaint charging defendant with one count each of possession for sale of a controlled substance (Health & Saf. Code, § 11378), possession of marijuana for sale (Health & Saf. Code,

§ 11359), maintenance of a place for selling or using a controlled substance (Health & Saf. Code, § 11366), and possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)).

In November 2010, defendant pleaded guilty to the first count, possession for sale of a controlled substance in violation of Health and Safety Code section 11378, pursuant to a negotiated disposition. The trial court accepted defendant's plea.

At the subsequent sentencing hearing, held on December 10, 2010, the court suspended imposition of sentence and placed defendant on probation for three years subject to certain terms and conditions, including that he serve three months in county jail.

In February 2011, defendant pleaded guilty to possession of cocaine base for sale in violation of Health and Safety Code section 11351.5 in another matter pursuant to a negotiated disposition. In March 2011, the court suspended imposition of sentence in this other matter and placed defendant on three years formal probation subject to certain terms and conditions, including that he serve six months in county jail. As part of the negotiated disposition, the court ruled that defendant's prior probation was terminated as unsuccessful.

On March 24, 2011, defendant filed a motion to withdraw his guilty plea in the earlier possession case pursuant to section 1018. He contended that recent investigations indicated wrongful conduct by San Francisco police in other matters, apparently analogous to the circumstances surrounding his own arrest, and that "[s]ince these matters are currently under investigation by the FBI, it appears that more evidence will be forthcoming which will show that law enforcement was in possession of exculpatory and impeaching evidence which would have undermined the state's evidence at a preliminary hearing and/or jury trial. Defendant would not have entered a guilty plea had he been provided with this *Brady* material."

Defendant also argued that the trial court had jurisdiction to consider his motion because it was filed within six months after an order granting probation. The People argued that the court lacked jurisdiction to consider defendant's motion because

probation had been terminated and judgment had been pronounced in the subject case. The People argued that the termination of defendant's probation as unsuccessful amounted to an entry of judgment. Defendant did not challenge this contention and, instead, appeared to accept it at the hearing below when his counsel stated, "What I understood was that they [the People] wished to read this [section 1018] as saying that the court is divested of jurisdiction if a final entry of judgment occurs. That language is simply not in the statute."

The court, after acknowledging that it was unaware of any case law addressing these particular circumstances, ruled that defendant did not have the right to move to withdraw his guilty plea pursuant to section 1018 and denied the motion.

Defendant filed a timely notice of appeal from the court's denial of his motion, with the trial court granting his request for a certificate of probable cause.

DISCUSSION

Defendant argues in his opening brief that the trial court erred in denying his motion to withdraw his guilty plea pursuant to section 1018 because the plain language of the statute requires the motion be brought within six months of the grant of probation.

Section 1018 states in relevant part: "On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may . . . permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice." (§ 1018.)

The parties debate the interpretation of a statute, section 1018, which is a question of law that we review de novo. (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 603.)

Defendant contends in his opening brief that the court entered judgment at the time it granted him probation. He further argues in his opening brief that the court was mistaken in denying his motion because he made it within six months of the court's previous order granting him probation. According to defendant, the plain language of

section 1018 allows a motion to withdraw a guilty plea under such circumstances, apparently regardless of when or if judgment was entered.

The People argue that defendant's motion was untimely under the plain meaning of section 1018. Its argument, which is not entirely clear, rests on the contention that the termination of defendant's probation places his circumstances outside the parameters of the statute. The People also argue that the legislative history of section 1018 supports the finding that defendant's motion was not timely.

In interpreting statutory language, “ ‘[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent.’ [Citation.] The process of interpreting the statute to ascertain that intent may involve up to three steps. . . . [Citations.] . . . [Citations.] We have explained this three-step sequence as follows: ‘we first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction.’ ” (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.)

“In the first step of the interpretive process we look to the words of the statute themselves. [Citations.] The Legislature's chosen language is the most reliable indicator of its intent because ‘it is the language of the statute itself that has successfully braved the legislative gauntlet.’ ” [Citations.] We give the words of the statute ‘a plain and commonsense meaning’ unless the statute specifically defines the words to give them a special meaning.” (*MacIsaac v. Waste Management Collection & Recycling, Inc., supra*, 134 Cal.App.4th at pp. 1082-1083.) “ ‘It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.’ ” (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.)

We are also mindful, however, that “[o]ur primary goal is to implement the legislative purpose, and, to do so, we may refuse to enforce a literal interpretation of the enactment if that interpretation produces an absurd result at odds with the legislative goal.” (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 527.)

Defendant's opening brief argument that he was entitled to bring a motion to withdraw his plea at any time within six months after he was granted probation, without

qualification, is not supported by the plain language of section 1018. It clearly states that defendant is only entitled to do so “if entry of judgment is suspended.” (§ 1018.) The People point out in their response that, as one court has indicated, the plain language of section 1018 indicates that the “critical question” is not a distinction “between defendants placed on probation and those remanded to serve a prison sentence,” but “whether judgment was entered or suspended.” (*People v. Williams* (2011) 199 Cal.App.4th 1285, 1288.) Thus, if, as defendant contends in his opening brief, judgment was already entered when he was granted probation, his motion was untimely. As the People also point out, the *Williams* court stated in response to a similar argument: “Appellant’s proposed third category purportedly allowing a defendant ‘to withdraw a guilty . . . plea as long as the motion is made within 6 months of judgment imposing probation,’ cannot be reconciled with the plain language of the statute. It ignores and renders surplusage the contingency ‘if entry of judgment is suspended’ and thereby conflicts with the ‘settled axiom of statutory construction that significance should be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided.’ ” (*Id.* at pp. 1288-1289.)

We agree with this analysis. To hold otherwise would be to ignore the phrase “if entry of judgment is suspended.” We cannot do so. To the contrary, we must “strive to give effect and significance to every word and phrase.” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1284.)

As defendant suggests, we have considered that the Legislature expressly directed that section 1018 “shall be liberally construed to effect these objects and to promote justice.” (§ 1018.) However, we see no reason to ignore altogether the plain language of the statute in order to do so.

In his reply brief, defendant responds to the People’s citation to *Williams* by changing his factual and legal theories without stating good cause for doing so. He asserts, contrary to his factual contention in his opening brief and for the first time, that judgment was never entered below because imposition of sentence was suspended. He further argues that termination of probation does not amount to entry of judgment and

that, under these newly asserted circumstances, the trial court had jurisdiction to consider his motion. He cites Penal Code section 1203.2 and California Rules of Court, rule 4.435 in support of his argument that the termination of probation does not amount to entry of judgment.

These new contentions and arguments are a virtually complete reworking of defendant's factual and legal presentation and go beyond a fair reply to the People's arguments. They should have been presented in the opening brief. Furthermore, "[p]oints raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before. To withhold a point until the closing brief deprives the respondent of the opportunity to answer it or requires the effort and delay of an additional brief by permission." (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.) Defendant does not state any good cause for his tardy arguments (which also were not raised in the trial court below). Therefore, we disregard them.

Given our conclusion, we need not address the remainder of the parties' arguments, such as regarding the legislative history of section 1018.

DISPOSITION

The trial court's denial of defendant's motion to withdraw his guilty plea is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.