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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GENESIS JACKSON,

Defendant and Appellant.

A133798

(San Francisco County
Super. Ct. No. 213343)

Appellant Genesis J. Jackson pleaded guilty to felony possession of cocaine for sale. Under the plea agreement, Jackson was placed on five years' formal probation and assessed a five-year prison term with execution of sentence suspended. Before judgment, Jackson moved to withdraw her plea. She contended that her plea was not knowing and intelligent because she did not understand its terms and consequences, and had they been fully explained to her, she would not have entered the plea. The trial court denied the motion, finding that Jackson lacked credibility and that she sufficiently understood the terms and consequences of her plea. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The preliminary hearing testimony showed that Jackson was stopped in May 2010 by a police officer while driving in an area known for narcotic sales. The officer recognized Jackson and knew she was on active parole. Two searches of Jackson revealed baggies containing suspected cocaine. The officer also confirmed that Jackson's driver's license was suspended.

In October 2010, Jackson was charged by information with felony sale of cocaine base (Health & Saf. Code § 11352 subd. (a)), felony possession for sale of cocaine base (Health & Saf. § Code 11351.5), and misdemeanor driving with a suspended or revoked license (Veh. Code § 14601.1 subd. (a)). The information also alleged enhancements for three prior felony convictions and Jackson's service of a prior term in state prison for the sale or purchase of a controlled substance. Jackson had entered guilty pleas to all three prior crimes, and was placed on probation for two of them. Phong Wang was appointed to represent Jackson.

On May 16, 2011, Jackson pleaded guilty to a single count of felony sale of cocaine base (Health & Saf. Code § 11352 subd. (a)). The remaining charges and enhancements were dismissed. The negotiated plea recommended that Jackson be sentenced to the upper term of five years in prison, execution of sentence suspended, and placed on five years' formal probation (or ESS probation). At the plea hearing, Wang stated that she had advised Jackson of the consequences of her plea. The court questioned Jackson to establish that the plea was knowing and voluntary.

Prior to judgment, Jackson moved to withdraw her guilty plea. Represented by new counsel, Jackson alleged that she did not understand the terms of the plea when she agreed to it and that Wang did not advise her of its consequences. Specifically, she argued that she was unaware of the difference between probation with execution of sentence suspended (ESS) and probation with imposition of sentence suspended (ISS). In the declaration in support of her motion, Jackson stated that Wang only explained to her that under ESS probation, Jackson could possibly be sentenced to state prison if she violated probation, "depending on the nature of the probation violation and what the judge had to say." Jackson also submitted Wang's handwritten copy of the plea terms presented to her at the time, which Jackson claimed came with little additional explanation.

At the hearing on Jackson's motion in October 2011, she testified that despite her innocence of possession for sale, she wanted to take a guilty plea because Wang informed

her she could face seven and a half years in state prison if she went to trial.¹ Jackson said she was originally offered a one-year outpatient program and three years' probation. According to Jackson, on the day she was scheduled to accept a plea, Wang instead presented her with two alternatives. She could take either five years' probation with a five-year ESS, or five years' probation with an eight-year ISS. Jackson stated that when she asked Wang to explain the offers Wang only told her that ESS was "standard probation" and she "should pretty much take that deal." Jackson said that Wang's explanation led her to believe that she could be sentenced to either three, four, or five years if she violated probation, similar to the other probations she had previously served.

In corroboration of her testimony, Jackson's friend David Hall testified that he was with Jackson in court on the day she entered her guilty plea. Hall stated that he heard Wang discuss two plea offers with Jackson, one concerning "ISS" and the other was "something about joint suspension." He stated that he also heard Wang explain something about five and eight years. According to Hall, he never heard Wang explain to Jackson what "joint suspension" meant. When Jackson asked Hall what the term meant, Hall told her that "she can basically get the guidelines that they wanted to give her, but it don't be like that sometimes." Hall also stated that after he tried to explain ESS to Jackson, she "went back and then talked to her lawyer again."

The court denied Jackson's motion. The court concluded that Jackson understood the difference between ESS and ISS probation, and that Hall's explanation further supplemented Wang's. The court also found that Jackson's testimony "had a certain degree of lack of credibility" because she testified she had originally been offered only a year in an outpatient program when it appeared the people had offered a three-year prison sentence. The court also thought it was not credible that Jackson did not know the difference between ESS and ISS in light of her previous probations and term in state prison. The court imposed and suspended the execution of a five-year prison term and placed Jackson on five years' formal probation.

¹ The People's Opposition to Defendant's Motion to Withdraw Guilty Plea states that Jackson faced an estimated 15 to 16 years in state prison.

A certificate of probable cause was granted and Jackson timely appealed.

II. DISCUSSION

Jackson maintains that the trial court abused its discretion when it denied her motion to withdraw her guilty plea. She argues that her plea was not knowing and intelligent because she neither understood nor was advised of the meaning and consequences of ESS probation. Jackson contends that but for her ignorance, she would not have pleaded guilty and instead would have proceeded to trial.

Penal Code section 1018 allows a defendant to withdraw a guilty plea any time before judgment upon a showing of good cause. (*People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1616–1617 (*Castaneda*)). To establish good cause, the defendant must show by clear and convincing evidence that he or she pleaded guilty due to “[m]istake, ignorance or any other factor overcoming the exercise of free judgment.” (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) Additionally, the defendant must “show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake,” ignorance, or other factor. (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416.)

The trial court has discretion whether to grant the motion to withdraw. (*People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796.) We must uphold a denial of the motion on appeal unless there is a clear showing that the trial court has abused its discretion. (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456; *People v. Waters* (1975) 52 Cal.App.3d 323, 328.) Moreover, we must adopt the trial court’s factual findings if they are supported by substantial evidence. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.” (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.)

A defendant’s guilty plea will be upheld if the record shows it is knowing, intelligent, and voluntary under the totality of the circumstances. (*People v. Murillo* (1995) 39 Cal.App.4th 1298, 1304.) “When the ground for withdrawing the guilty plea is the omission of advisement of the consequences of the plea, the defendant must show

ignorance: that [the defendant] was actually unaware of the possible consequences of [the] plea.” (*Castaneda, supra*, 37 Cal.App.4th at p. 1619.)

Although Jackson testified that she did not understand the meaning of ESS probation, there is a sufficient basis in the record to affirm the trial court’s findings.

The court relied on Jackson’s testimony that Wang advised her of two plea offers. One was an offer for five years’ probation with a five-year prison term imposed with execution suspended. The other was for five years’ probation with an eight-year prison term imposition suspended. Jackson denied that the prosecution ever offered a disposition that would have required her to serve time in prison.

Hall testified that he essentially told Jackson that suspended execution of sentence removed the trial court’s discretion to sentence her to less than the agreed prison term if she were to violate probation. After he told Jackson of his understanding of the suspended execution of sentence, he told her “[d]on’t take nothing that you don’t want.” Jackson then conferred with her lawyer for five or six minutes. When Jackson next spoke with Hall, he had the impression she still didn’t understand the terms of the plea, so he “explained it to her thoroughly.” Jackson still seemed to be unsure and again spoke with her counsel. She then returned to the courtroom and entered her plea.

When her counsel informed the court of the terms of the plea, she stated that “Miss Jackson will receive the upper term of five years in state prison. The execution of sentence will be suspended and Miss Jackson will be placed on formal probation for a period of five years.” In ensuring that Jackson’s plea was knowing and voluntary, the court confirmed Jackson’s understanding that if she were to “violate any of the terms of that probation, [she] could be sentenced to state prison without a trial.” Jackson also denied that anyone had pressured her to accept the plea and stated she was doing so freely and voluntarily.

This record amply supports the court’s exercise of discretion when it denied Jackson leave to withdraw her guilty plea. Based upon her denial that she was extended any offer that included prison time, her prior felony experience and her averments when her plea was taken, there was a sufficient basis for the trial court to question Jackson’s

credibility. Moreover, the record of her plea hearing clearly shows that Jackson was aware that she was sentenced to the upper term of five years in state prison. Finally, Hall testified that he engaged in a lengthy exchange with Jackson over the import of an imposed sentence with execution suspended, and that she confronted her counsel about its possible significance. This combination of factors lead us to conclude the court did not abuse its discretion when it denied Jackson's motion to withdraw her plea. That decision cannot be characterized as arbitrary or illogical.

III. DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.