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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN SEBRING,

Defendant and Appellant.

A136123

(San Francisco County  
Super. Ct. No. MCR-1537532)

Sean Sebring appeals from an order denying his motion to withdraw his plea and his motion for specific performance of his plea bargain. He contends that he was denied due process because he was not permitted to withdraw his guilty plea upon completion of probation, other than as provided by Penal Code<sup>1</sup> section 1203.4, in violation of his plea bargain. We affirm.

**I. FACTUAL BACKGROUND**

On October 5, 1994, a criminal complaint was filed charging defendant with extortion (§ 524); criminal threats (§ 422); and stalking (§ 646.9, subd. (a)). On December 9, 1994, defendant pled guilty to a misdemeanor violation of section 422. The plea was entered with the understanding that defendant would be placed on probation for three years and that the remaining charges of the complaint would be dismissed. Defendant also agreed to (1) provide a written statement declaring that his accusations of criminal acts perpetrated on him by the victim were incorrect and (2) submit to a

<sup>1</sup> All further statutory references are to the Penal Code.

psychiatric evaluation. The court imposed the agreed-upon sentence and placed defendant on probation for three years with credit for 70 days already served. Upon the prosecutor's motion, the court dismissed the remaining counts. Defendant was represented by counsel.

On February 5, 1996, defendant moved to withdraw his guilty plea. The court denied the motion as untimely. On July 20, 1998, the court's ruling was affirmed on appeal.

About five years after entering his plea, on February 25, 2000, defendant moved pursuant to section 1203.4 to withdraw his plea of guilty and to dismiss the action. He declared that he had successfully completed the terms of probation, was not serving a sentence for any offense, and was not on probation or charged with any offense. On March 24, 2000, the court granted the motion and ordered the complaint and amended complaint in Case No. MCR-1537532 dismissed. The order further stated that it did not "relieve the defendant from disclosing the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery."

On April 18, 2012, defendant filed another motion to withdraw his guilty plea pursuant to the plea bargain, to vacate the judgment, and for specific performance of the plea bargain. Defendant maintained that in exchange for his plea of guilty, the prosecutor promised him that after he completed probation, he could withdraw his plea of guilty "without limitation or exception and for all purposes, and that then I would stand in the position I was prior to the entry of the guilty plea, and that I would stand trial on the original charges if I withdrew my guilty plea." He states his understanding "evolved to be" that he would stand trial on only count II of the amended complaint.

The People opposed the motion, arguing that: (1) defendant had already obtained relief under section 1203.4; (2) the time limits for relief under section 1018 had expired; (3) he was not entitled to petition for a writ of habeas corpus because he was not in custody; and (4) any request for relief pursuant to a writ of *coram nobis* was untimely due

to the substantial delay in seeking relief and defendant's failure to provide any explanation or justification for the delay.

The court denied defendant's motion to withdraw his plea. With regard to defendant's motion for specific performance of the plea bargain, the court denied the motion, finding that defendant had already obtained that relief because the plea was withdrawn pursuant to section 1203.4, his probation was terminated, and his case dismissed. The court also noted that defendant had been represented by counsel at the time his plea was entered.

## II. DISCUSSION

Section 1203.4 provides that in any case in which a defendant has successfully completed the conditions of probation, the court may permit the defendant to withdraw his or her guilty plea, after which "the court shall set aside the verdict of guilty; and . . . the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted . . . ." (§ 1203.4, subd. (a)(1).) "[T]he expungement procedure does not eradicate the conviction. Even though the information has been dismissed, the 'expunged' conviction may be pleaded and proved in a subsequent case as a prior conviction." (*People v. Wiedersperg* (1975) 44 Cal.App.3d 550, 553–554.)

Here, the record shows that on May 24, 2000, the court granted defendant's motion pursuant to section 1203.4, and entered an order granting defendant's motion to withdraw his guilty plea and to dismiss the complaint.

Defendant acknowledges that he obtained section 1203.4 relief, and he conceded at the hearing below that when the prosecutor at the time of his plea bargain told him he would be able to withdraw his plea upon successful completion of probation, "it is very possible that [the prosecutor] . . . meant subjectively that it was 1203.4 relief." Nonetheless, he argued below and continues to assert on appeal that the prosecutor promised him he would not only be allowed to withdraw his plea, but that he would be able to stand trial on the original charges which he now contends would include only the

charge to which he pled. In a declaration in support of his motion to withdraw his plea, he avers that the prosecutor's promise was the motivating factor for his guilty plea and that he would not have entered the plea if the prosecutor had not told him that he would be able to withdraw his plea after probation.

Defendant thus contends that, as a contractual matter, he is entitled to enforce the plea agreement he reached with the prosecutor. We are not persuaded.

As the trial court found, it had no jurisdiction to entertain defendant's request, and even if it were to entertain the motion on the merits, defendant received specific performance of his plea agreement; he was able to withdraw his plea pursuant to section 1203.4 in May 2000.

Defendant's further claim—that he relied on the prosecutor's promise that he would be entitled to withdraw his plea and stand trial on Count II of the amended complaint—is not corroborated in the record, and is belied by his affirmative recanting of his defense that he was the victim of the perpetrator. Defendant, however, argues that because his declaration regarding the plea bargain was unrebutted, the court should have granted the motion. We need not accept defendant's self-serving declaration as accurately reflecting the prosecutor's admonishments to him. (See *In re Alvernaz* (1992) 2 Cal.4th 924, 938 [in reviewing claim that a defendant would not have accepted a plea agreement, "a defendant's self-serving statement—after trial, conviction, and sentence—that with competent advice he or she *would* have accepted a proffered plea bargain, is insufficient in and of itself to sustain the defendant's burden of proof as to prejudice, and must be corroborated independently by objective evidence."].) It strains credulity that a prosecutor or defense counsel would have proposed that after completing his probation, defendant would be permitted—at his own pleasure and for an indefinite period—to withdraw his plea and proceed to trial on the single charge to which he pled guilty. Defendant also does not explain why he failed, in May of 2000, to object to the restricted nature of the Section 1203.4 relief if he genuinely believed at that time he was entitled to withdraw his plea "without limitation or exception and for all purposes."

Here, defendant received the benefit of his plea bargain — the ability to seek relief under section 1203.4 upon the completion of probation. The complaint against him was dismissed. He cannot now, after 18 years, obtain a reinstatement of the charges against him. As the court in *People v. Shokur* (2012) 205 Cal.App.4th 1398, 1405–1406 (*Shokur*) explained in interpreting our Supreme Court’s decision in *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 300–301, “[i]t is one thing to say the court has jurisdiction to consider a constitutional claim in a case then pending before it. It is quite another to conclude a court has jurisdiction to consider a constitutional claim long after its judgment has become final *and* the time limits on the various postjudgment vehicles in which such a constitutional claim may be raised have passed.”

Nor does defendant have any other avenues to address his claim. He acknowledged that he was not proceeding under section 1018, the standard statutory provision for a motion to withdraw a plea, because such a motion would be untimely. Under section 1018, a defendant may move to withdraw a plea before judgment has been entered upon a showing of good cause. (§ 1018.) Defendant also asserted that he was not proceeding under section 1203.4, but was making a motion akin to a petition for a writ of *coram nobis*, under a due process theory. Yet he informed the court that he was not proceeding by a writ of *coram nobis* or by a writ of habeas corpus.<sup>2</sup> Accordingly, the court found defendant had not brought his motion before the court by an appropriate means. The court had no jurisdiction to reach the merits of defendant’s motion.

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<sup>2</sup> A writ of *coram nobis* requires that the petitioner “ ‘ ‘show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of judgment” ’ ’ and that the newly discovered evidence does not go to the merits of the issues tried and that the motion was brought with due diligence upon the discovery to him or her of the new facts. (*People v. Kim* (2009) 45 Cal.4th 1078, 1093.) Further, defendant cannot proceed via a writ of habeas corpus. He is not on probation or otherwise in actual or physical custody. (See *In re Azurin* (2001) 87 Cal.App.4th 20, 23 [writ of habeas corpus available to persons in actual or constructive custody including individuals on parole, probation, bail or a sentenced prisoner released on his own recognizance pending a hearing on his petition’s merits].)

As the court explained in *Shokur, supra*, defendant had several means to withdraw his plea—section 1018, appeal of his conviction (§ 1237), or filing a petition for writ of habeas corpus. (*Shokur, supra*, 205 Cal.App.4th at p. 1406.) He did not avail himself of those remedies, and over 18 years have passed since the judgment of conviction was entered. A trial court does not retain “jurisdiction for all time to consider belated constitutional challenges to a long-since final judgment.” (*Ibid.*) Since defendant failed to avail himself of the remedies provided by law, he cannot years later obtain relief via a nonstatutory motion challenging his plea on due process grounds. (*Ibid.*, see, also *People v. Picklesimer* (2010) 48 Cal.4th 330, 337 [“ ‘no statutory authority for a trial court to entertain a postjudgment motion that is unrelated to any proceeding then pending before the court.’ ”])

### III. DISPOSITION

The judgment is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.