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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN BAJA LUIS,

Defendant and Appellant.

A144540

(San Mateo County Super. Ct.  
No. SC075327A)

Defendant Alvin Baja Luis pled no contest to two counts of attempted murder (Pen. Code, §§ 664/187, subd. (a)),<sup>1</sup> four counts of criminal threats (§ 422), and one count of assault with a firearm (§ 245, subd. (a)(2)), as well as associated enhancements and special allegations. He was sentenced to 16 years in prison. Defendant filed a notice of appeal and obtained a certificate of probable cause. Defendant’s counsel has raised no issue on appeal and asks this court for an independent review of the record to determine whether there are any arguable issues. (See *Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) We find no arguable issues and affirm.

BACKGROUND

In May 2013, an amended information was filed charging defendant with 21 counts involving seven victims, including two counts of attempted murder with malice aforethought (§ 664/187, subd. (a)), seven counts of assault with a firearm (§ 245, subd.

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

(a)(2)), six counts of criminal threats (§ 422), and six counts of false imprisonment (§ 236), plus various enhancements and special allegations.

According to the probation report,<sup>2</sup> on November 20, 2011, defendant held at gunpoint several members of his family, as well as two friends of the family, inside a bedroom at his sister's house. He brandished a semi-automatic handgun and an air gun, threatening to kill the victims if his sisters did not give him his share of a family inheritance. Defendant's brother later reported that the two of them had smoked methamphetamine earlier in the day. Defendant " 'pistol whipped' " one of his sisters, kicked one of the friends in the stomach, and slapped his other sister. The victims eventually escaped through a window. As one of his sisters climbed out the window, defendant shot her in the hand. Defendant pointed his gun at one of the family friends and pulled the trigger; the woman heard the gun click, but the gun did not fire. When arrested, defendant told the police he was only trying to scare his family and the firearm went off accidentally.

In May 2013, defendant signed a plea form and orally entered no contest pleas to two counts of attempted murder (§§ 664/187), four counts of criminal threats (§ 422), and one count of assault with a firearm (§ 245, subd. (a)(2)). He also admitted various enhancements and special allegations. At the hearing at which he entered his plea, defendant stated he understood the charges and had read, understood, and signed the written waiver form. The trial court recited the rights defendant would give up by pleading no contest, and defendant stated he understood and was willing to waive those rights. The court set forth the terms of the agreement. The court informed defendant there was a sentencing range of between eight and thirty four years, but indicated it intended to impose a sentence of between 15 and 19 years. Defendant stated he understood.

In November 2013, defendant moved to withdraw the plea. At the hearing on the motion, he testified he was in severe pain due to a gout flare-up on the day he entered his

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<sup>2</sup> Testimony thoroughly detailing the incident was presented at the preliminary hearing.

no contest plea. Due to the pain, he did not realize what he was doing when he signed the written plea waiver form, and he could not read the form because he had forgotten his glasses that day. He would not have signed the form if he had not been in so much pain. When his plea was taken, he did not understand what the judge was saying. His lawyer told him to just say yes to the judge's questions.

Medical records supported defendant's complaint of painful gout, and a doctor who testified on defendant's behalf opined that defendant suffered from severe pain on the day of the plea hearing. In the doctor's opinion, defendant's condition was severe enough to impair his ability to make decisions. A clinical psychologist who interviewed defendant testified he believed defendant was in enough pain to interfere with his ability to understand what he was being told and to enter a voluntary and intelligent plea. On the trial court's order, defendant's prior counsel testified that defendant did not complain of pain the day of the plea hearing. Prior counsel also confirmed his attestation on the plea form that he read and explained the contents of the form to defendant. Counsel did not see any physical signs that raised concern as to whether defendant could enter a voluntary and intelligent plea.

The trial court found defendant had not met his burden to justify withdrawal of the plea. The court stated it believed that had defendant been in significant pain, either the court or his counsel would have noticed it. The court noted that pain "can ebb and flow over time," and disagreed with the conclusions of the testifying doctor and clinical psychologist regarding defendant's ability to enter a valid plea.

At the sentencing hearing, friends and members of defendant's family requested that the trial court impose a lenient sentence. The court imposed a sentence of 16 years in state prison, which it found appropriate in light of all of the circumstances of the case. The court imposed the low term of five years on one attempted murder charge, with a consecutive three year term on the attached great bodily injury enhancement and a consecutive four year term on the personal use enhancement. The court imposed a concurrent five year term on the second attempted murder charge, along with a concurrent three year term on its attached personal use enhancement. The court imposed

a concurrent two year term on the assault with a firearm charge. It imposed consecutive eight month sentences on the four criminal threats charges, as well as a 16 month term for the personal use enhancement attached to one of the counts. The court also awarded credits and imposed fines, fees, and victim restitution.

This appeal followed. The trial court granted defendant's request for a certificate of probable cause.

#### DISCUSSION

We have reviewed the entire record and have found no arguable appellate issues. Defendant was adequately represented by legal counsel throughout the proceedings.

Defendant completed a plea form that described the constitutional rights he was waiving by entering a no contest plea, the trial court went over those rights with defendant, and the court found defendant freely and intelligently waived those rights. Defense counsel stipulated there was a factual basis for the plea based on the police report and testimony at the preliminary hearing.

The trial court did not abuse its discretion in denying defendant's motion to withdraw the plea. (*People v. Archer* (2014) 230 Cal.App.4th 693, 702.) Substantial evidence supports the court's finding (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254) that defendant failed to “ ‘show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress.’ ” (*Archer*, at p. 702.) In particular, the trial court's and defendant's prior counsel's observations support the court's finding that defendant was not mentally incapacitated by pain at the time of the plea. (See *Fairbank*, at p. 1254 [“Here, substantial evidence, including the trial court's own observations of defendant, supports the court's factual determination that defendant was not intoxicated at the time he entered his guilty plea and that his plea was knowing, intelligent, and voluntary.”].)

The trial court's sentence was consistent with the plea agreement. The fines and fees imposed by the court were proper.

Appellate counsel advised defendant of his right to file a supplemental brief to bring to the court's attention any issue he believes deserves review. (See *People v. Kelly* (2006) 40 Cal.4th 106.) Defendant did not file such a brief. We have found no legal issues that require further briefing.

#### DISPOSITION

The judgment is affirmed.

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Simons, J.

We concur:

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Needham, J.

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Bruiniers, J.

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