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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SONNY ROCKY HARRIS,

Defendant and Appellant.

B236855

(Los Angeles County
Super. Ct. No. GA079019)

APPEAL from a judgment of the Superior Court of Los Angeles County. Suzette Clover, Judge. Reversed and remanded.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Russell A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

An information, dated June 8, 2010, charged Sonny Rocky Harris with two counts of second degree robbery (Pen. Code, § 211¹) and one count of second degree commercial burglary (§ 459). As relevant, the information specially alleged that Harris had two prior serious or violent felony convictions for robbery that qualified as strikes under the “Three Strikes” law and that one of them subjected him to a five-year enhancement under section 667, subdivision (a)(1).

On November 9, Harris’s privately retained counsel filed a motion to withdraw as attorney of record on the ground that Harris and his family had agreed to pay attorney fees through trial but did not pay the agreed-upon fees and that the “failure to pay the entire attorney[] fees has caused a conflict between” counsel and Harris. According to counsel, “On or about 02-22-2010 I was hired by [Harris] and his family to represent [Harris] through trial for an agreed[-]upon amount. On 10-15-2010, I was told by [Harris] and [his] family that they would not be able to pay me my attorney[] fees. Hence a conflict has arisen between me and [Harris].” A week later, on November 16, the trial court denied the motion, although it appointed an investigator at the court’s expense.

Immediately after denial of the motion, Harris asked the court to allow his retained counsel to withdraw and appoint counsel for him. Harris stated, “There’s been a conflict with me and my attorney. We [have] been having issues[,] attitudes and certain things that haven’t followed up with him. I really would be okay if I could get a public defender. . . . [W]e are not getting along at all. He [has] not been helping me [with] anything. I haven’t been getting any . . . visits from the jail, talk to him, or even speak to him at all.” The court denied Harris’s request. As to appointment of counsel, the court concluded, “Doesn’t really work that way. But you can always choose to hire other counsel if you are not getting along with this counsel” Retained counsel thus continued to represent Harris through a jury trial, which began on March 22, 2011.

The jury convicted Harris on all three counts. After Harris waived his right to a jury trial on the special allegations, the trial court found that Harris had two

¹ Statutory references are to the Penal Code.

prior serious or violent felony convictions for robbery. The court sentenced Harris as a third-striker to a state prison term of 30 years to life, consisting of 25 years to life under the Three Strikes law for the robbery in count 1, plus 5 years under section 667, subdivision (a)(1). It imposed a concurrent sentence for the robbery in count 2 and stayed imposition of sentence, pursuant to section 654, for the burglary in count 3.

Harris contends, and the People agree, that the judgment must be reversed because the trial court violated Harris's constitutional right to counsel by denying his request to allow his privately retained counsel to withdraw as attorney of record. Harris and the People are correct. We therefore reverse the judgment.

“[W]hen a criminal defendant makes a timely motion to discharge his retained attorney he should not be required to demonstrate the latter's incompetence, as long as the discharge will not result in prejudice to the defendant or in an unreasonable disruption of the orderly processes of justice.” (*People v. Ortiz* (1990) 51 Cal.3d 975, 979.) Absent a showing of prejudice or unreasonable disruption, the trial court should discharge privately retained counsel and, if the defendant is indigent, appoint counsel for him. (*Id.* at pp. 983-984, 989-990; *id.* at p. 987 [“a court must not consider whether a defendant is indigent and will require appointment of counsel in ruling on his timely motion to discharge retained counsel”].) Failure to do so deprives the defendant of the right to defend with counsel of his choice and thus constitutes grounds for automatic reversal of the judgment. (*Id.* at pp. 988-989; *People v. Lara* (2001) 86 Cal.App.4th 139, 155 [“If such factors [of prejudice or unreasonable disruption] are not implicated in defendant's motion to discharge his retained counsel, the trial court's denial of defendant's motion requires automatic reversal of the conviction”].)

In this case, Harris unequivocally requested that his privately retained counsel be permitted to withdraw from the case. Nothing in the record suggests that allowing privately retained counsel to withdraw would have prejudiced Harris. Upon a showing of indigency, the trial court should have appointed counsel, who could have prepared for trial. Nor was Harris's request untimely such that granting it would have caused unreasonable disruption to the proceedings. He made the request more than a month

before the scheduled trial date, which later was continued for several months. And, at the time of Harris's request, the court appointed an investigator, to be paid at the court's expense, demonstrating it recognized investigation into the matter and trial preparation was ongoing. As a result, the court erred by denying Harris's request to allow his privately retained counsel to withdraw. After allowing privately retained counsel to withdraw, the court should have afforded Harris the opportunity to demonstrate indigency and, if he were indigent, appointed an attorney for him.² Based on the error, reversal is automatic. (*People v. Ortiz, supra*, 51 Cal.3d at pp. 988-989; *People v. Lara, supra*, 86 Cal.App.4th at p. 155.)

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with this opinion. Upon a showing of indigency, the trial court should appoint counsel for Harris.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.

² In seeking to withdraw from the case, Harris's privately retained counsel stated that Harris could not pay his attorney fees as they had agreed for representation through trial. The court appointed an investigator at the court's expense but did not inquire into Harris's financial status. Accordingly, a determination of indigency by the court is appropriate on remand.