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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN CONTRERAS, JR.,

Defendant and Appellant.

2d Crim. No. B264881
(Super. Ct. No. 1351268)
(Santa Barbara County)

Martin Contreras, Jr. appeals an order denying his motion to withdraw his guilty plea. (Pen. Code, § 1018.)¹ The trial court denied the motion as untimely. (*Ibid.*)

We appointed counsel to represent Contreras in this appeal. After examination of the record, counsel filed an opening brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) On August 18, 2015, we advised Contreras that he had 30 days within which to personally submit any contentions or issues that he wished to raise on appeal. On September 1, 2015, we received a response from him contending that that the trial court erred by denying the motion to withdraw his plea. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 123-124, we present a factual and procedural summary of the case and a brief discussion of Contreras's contention.

¹ All statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

On November 16, 2010, the Santa Barbara County prosecutor charged Contreras by felony complaint with attempted deliberate and premeditated murder (count 1) and unlawful possession of a firearm (count 2), with an allegation of criminal street gang terrorism. (§§ 664, 187, subd. (a), 189, former 12021, subd. (a)(1), 186.22, subd. (b)(1).) The prosecutor also alleged that Contreras suffered a prior serious felony and strike conviction and served a prior prison term. (§§ 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The prosecutor subsequently amended the felony complaint to add a second count of attempted deliberate and premeditated murder and an allegation of firearm use. (§§ 664, 187, subd. (a), 189, 12022.53, subds. (b) & (e)(1).)

As part of a plea agreement, Contreras waived his right to a preliminary hearing, waived his constitutional rights, and entered a guilty plea to two counts of attempted first degree murder. Contreras also admitted the criminal street gang and weapon use allegations. On May 20, 2014, the trial court sentenced Contreras to a prison term of 29 years four months, including a seven year term for one count of attempted murder, and a consecutive two year four month term for the second count of attempted murder. The court added a ten year term for the criminal street gang allegation and a ten year term for the weapon use allegation. The court imposed various fines and fees, awarded Contreras 1,474 days of presentence custody credit, and struck the remaining criminal counts and allegations.

Approximately six months following his sentencing, Contreras moved to withdraw his plea. He alleged that he did not understand or comprehend the plea agreement. Following a hearing, the trial court denied the motion.

DISCUSSION

A defendant who seeks to withdraw his guilty or nolo contendere plea may do so prior to judgment by showing good cause. (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.) Section 1018 provides: "On application of the defendant at any

time before judgment . . . [the trial] court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted."

Where a defendant is represented by counsel, the grant or denial of a motion to withdraw a plea is within the trial court's discretion. (*People v. Sandoval, supra*, 140 Cal.App.4th 111, 123.) On appeal, the reviewing court must affirm the trial court's decision absent a showing of abuse of discretion. (*Ibid.*) Defendant bears the burden of establishing that the court abused its discretion by denying a motion to withdraw his plea. (*Ibid.*)

Here Contreras sought to withdraw his plea and admissions nearly six months following pronouncement of sentence and entry of judgment. Section 1018 requires that Contreras move to withdraw his plea "at any time before judgment." Accordingly, the trial court did not abuse its discretion by denying his motion as untimely.

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

John F. McGregor, Judge
Superior Court County of Santa Barbara

Richard B. Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.