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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CLARENCE BRADLEY,

Defendant and Appellant.

C068118

(Super. Ct. Nos.
10F07719, 09F09224)

Midway through the sentencing hearing on defendant Clarence Bradley's no contest plea to transporting methamphetamine, resisting arrest, and driving under the influence, defense counsel told the trial court defendant "has stated to me he wants to file an ineffective assistance of counsel[.]" On appeal, defendant contends the trial court committed reversible error in failing to halt sentencing proceedings to conduct a Marsden hearing into his claim of defense counsel's inadequate performance.¹

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

We disagree and shall affirm the judgment.

BACKGROUND

Pursuant to a negotiated disposition, defendant pled no contest in case No. 10F07719 to transporting methamphetamine, and misdemeanor resisting arrest and driving under the influence, in exchange for a stipulated three-year prison sentence. He also admitted these offenses violated his probation in case No. 09F09224; his probation was revoked, and he was sentenced on the underlying methamphetamine possession charge to eight months in prison.

Before the scheduled sentencing hearing, defendant made a written motion to withdraw his plea (which motion is not in the record on appeal). Asked to explain the basis for the motion, defense counsel told the court defendant "feels he's getting too much time. I explained to him that that is not a legal basis" to withdraw the plea. The court denied the motion and proceeded with sentencing: it found defendant ineligible for probation, found certain factors in aggravation to exist, sentenced defendant to three years in prison in case No. 10F07719, and imposed restitution fines and a mandatory court security fee.

Defense counsel then interrupted: "Your Honor, [defendant] has stated to me he wants to file an ineffective assistance of counsel, but that would be done --

"The Court: That can be done on appeal, and I'm in the middle of sentencing here." The court then went on, in case No. 10F07719, to impose additional fees, require defendant to register as a convicted narcotic offender, and suspend his

driving privileges; in case No. 09F09224, it sentenced him to state prison for a consecutive term of eight months and imposed various fines. After awarding presentence credits, the court asked defense counsel, "Anything further[?]" to which she answered "no."

DISCUSSION

Defendant contends on appeal that his assertion, through appointed counsel, that he had received inadequate representation "was pregnant with the implication that he sought to substitute new counsel" and the court's failure to hold a *Marsden* hearing was error.

When a defendant complains about the adequacy of appointed counsel, the trial court must permit the defendant to articulate the basis for his concerns so that the court can determine if they have merit and, if necessary, appoint new counsel.

(*Marsden, supra*, 2 Cal.3d at pp. 123-124; accord, *People v. Smith* (1993) 6 Cal.4th 684, 691.) The rule requiring a *Marsden* hearing applies equally posttrial. "[T]he trial court should appoint substitute counsel when a proper showing [pursuant to *Marsden*] has been made at any stage [of the proceedings]. A defendant is entitled to competent representation at all times" (*Smith*, at p. 695.)

But "[t]he trial court is not obliged to initiate a *Marsden* inquiry sua sponte. [Citation.] The court's duty to conduct the inquiry arises 'only when the defendant asserts directly or by implication that his counsel's performance has been so inadequate as to deny him his constitutional right to effective

counsel.' [Citations.]" (*People v. Lara* (2001) 86 Cal.App.4th 139, 150-151.) "[A] trial court's duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises when the defendant in some manner moves to discharge his current counsel. The mere fact that there appears to be a difference of opinion between a defendant and his attorney over trial tactics does not place a court under a duty to hold a *Marsden* hearing." (*People v. Lucky* (1988) 45 Cal.3d 259, 281, fn. omitted.) A proper, formal legal motion is not required, but the defendant must provide "'at least some clear indication . . . ' . . . that [he] 'wants a substitute attorney.'" (*People v. Sanchez* (2011) 53 Cal.4th 80, 89-90 (*Sanchez*), quoting *Lucky, supra*, 45 Cal.3d at p. 281, fn. 8.) "Mere grumbling" about counsel's failures is insufficient to invoke a *Marsden* hearing. (*People v. Lee* (2002) 95 Cal.App.4th 772, 780 (*Lee*).) "[W]e will not find error on the part of the trial court for failure to conduct a *Marsden* hearing in the absence of evidence that defendant made his desire for appointment of new counsel known to the court." (*People v. Richardson* (2009) 171 Cal.App.4th 479, 484 (*Richardson*); see also *People v. Gay* (1990) 221 Cal.App.3d 1065, 1070 [a "trial judge should not be obligated to take steps toward appointing new counsel where defendant does not even seek such relief"].)

Here, the trial court did not improperly fail to conduct a *Marsden* hearing because neither defendant nor his counsel expressed any indication, much less a "clear" one, that defendant desired new counsel. (Cf. *Sanchez, supra*, 53 Cal.4th

at pp. 89-90.) Defendant's apparent unhappiness with his appointed counsel -- articulated only by counsel -- is more akin to "mere grumbling" (cf. *Lee, supra*, 95 Cal.App.4th at p. 780), particularly when viewed in light of context of his recently-stated "feel[ing] he's getting too much time[,]" notwithstanding his plea to a stipulated sentence. Because there was no evidence from which we can conclude defendant made known to the court his desire for the appointment of new counsel, we cannot fault the trial court for failing to conduct a *Marsden* hearing. (Cf. *Richardson, supra*, 171 Cal.App.4th at p. 484.)

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

MURRAY, J.

DUARTE, J.