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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN DOUGLAS SHAVER,

Defendant and Appellant.

C070080

(Super. Ct. No. S11CRF0122)

Defendant Stephen Douglas Shaver pled no contest to illegal possession of a firearm, obstructing an officer by force or threat, and brandishing a firearm in exchange for a stipulated term of two years eight months to be served as a split sentence pursuant to Penal Code section 1170, subdivision (h), with one year in county jail and the remaining time (not to exceed three years) on mandatory supervision.¹

At sentencing, the trial court determined defendant did not qualify for sentencing pursuant to section 1170, subdivision (h), and sentenced defendant to two years

¹ Undesignated statutory references are to the Penal Code.

eight months, suspended execution of sentence, and placed defendant on five years' probation on the condition he serve nine months in county jail. Defendant did not object to the changed terms of his sentence but the trial court did not give the section 1192.5 admonition informing him of his right to withdraw his plea.

Defendant contends, and the People concede, that the matter must be remanded to the trial court for further proceedings to allow defendant to withdraw his plea if he so chooses. We agree.

Due process requires that both parties, including the state, abide by the terms of the plea agreement and that the punishment imposed not significantly exceed that which the parties agreed upon. (*People v. Villalobos* (2012) 54 Cal.4th 177, 182.) “ ‘[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.’ (*Santobello v. New York* [(1971)] 404 U.S. [257,] 262 [30 L.Ed.2d [427,] 433].)” (*People v. Mancheno* (1982) 32 Cal.3d 855, 860.)

Along these lines, section 1192.5 provides, in relevant part, that when a plea bargain entered into by the parties is approved by the court, the defendant generally “cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea.” The court “shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so.” (§ 1192.5.)

“A defendant forfeits a claim that his punishment exceeds the terms of a plea bargain when the trial court gives a section 1192.5 admonition and the defendant does not withdraw his plea at sentencing. (Citation.)” (*People v. Villalobos, supra*, 54 Cal.4th at

p. 182.) But where, as here, the trial court fails to give a section 1192.5 admonition, the defendant's failure to object at sentencing does not waive his claim on appeal.

Because the trial court was unable to abide by the terms of the plea agreement, defendant must be afforded the opportunity to withdraw his plea.

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court to allow defendant an opportunity to withdraw his plea. If he does not move to do so within 30 days of the filing of the remittitur, the trial court is directed to reinstate the judgment.

BLEASE, Acting P. J.

We concur:

BUTZ, J.

HOCH, J.