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

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWNTAY RAULSTON,

Defendant and Appellant.

C070114

(Super. Ct. No. 10F06212)

Defendant Shawntay Raulston pled no contest to assault with a deadly weapon and admitted violating her probation in a 2006 Sacramento County case. Pursuant to the plea agreement, the court suspended imposition of sentence and placed defendant on five years' formal probation subject to one year in the county jail. The trial court subsequently denied defendant's motion to withdraw the plea and vacate her admission to violating probation.

Having obtained a certificate of probable cause, defendant contends on appeal that the denial of her motion to withdraw the plea was an abuse of discretion, and trial counsel was

ineffective in failing to investigate defendant's probation status. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 19, 2010, defendant returned to her home after being gone for the weekend. After determining that her children disobeyed her instructions, defendant attacked one of her children, 14-year-old M. H., with a steak knife and large carving fork. Defendant also struck M. H. about the head and shoulders with a plastic coat hanger, breaking the hanger into pieces.

Defendant pled no contest to assault with a deadly weapon on October 3, 2011. On November 10, 2011, defendant filed a motion to withdraw her plea on the basis that she was no longer on probation in the 2006 case when she entered her plea. Probation had expired in June 2011. At a hearing on her motion, defense counsel argued that defendant was entitled to withdraw her plea because she believed that even if she was acquitted following a trial, she would still be subject to incarceration on the Sacramento County probation violation. When the trial court pointed out that she was still on probation in a Placer County case, defense counsel replied that defendant's "position in dealing with the violation of probation in another county before a court that did not hear the evidence at the trial would be different than dealing with the Court who heard the evidence at the trial."

Counsel also asserted that the possibility of having probation violated following an acquittal was discussed during

the plea negotiations, and he had advised defendant of this possibility. The court pointed out that much of the plea negotiations involved demonstrating to defendant the "overwhelming" strength of the People's case, and defendant accepted the plea only after going over the evidence and having a night to think about it. Counsel admitted having a conversation with defendant about the 911 tapes, but maintained that defendant's "reason for the plea was the probation case."

The trial court found that defendant's admission of the probation violation was "a minor part" of the plea agreement. Defendant's probation in the 2006 case was not summarily revoked at arraignment on the instant case in September 2012 or it would not have expired. According to the trial court, the Sacramento County probation did not matter to the court's acceptance of the plea agreement, which was "very fair" to defendant. Since defendant was on probation in Placer County at the time of the plea, the status of defendant's Sacramento County probation provided no legal basis for withdrawing her plea.

DISCUSSION

I

Motion To Withdraw Plea

Defendant contends the trial court's denial of her motion to withdraw her no contest plea was an abuse of discretion. We disagree.

Where, as here, the defendant was represented by counsel at the time of the guilty plea, the court has discretion whether to permit withdrawal of the plea upon a showing of good cause.

(*People v. Cruz* (1974) 12 Cal.3d 562, 566.) "Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea. [Citations.] But good cause must be shown by clear and convincing evidence."

(*Ibid.*) The trial court's decision to deny a motion to withdraw a plea will not be overturned on appeal absent a showing of a clear abuse of discretion. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

Defendant claims the key to her accepting the plea was her mistaken belief that an acquittal on the substantive charges would not prevent the court from violating her probation and imposing a prison term. Asserting that acquittal on the substantive charges would have kept her out of prison, defendant contends her ignorance about her probationary status was a mistake of fact and therefore good cause for withdrawing the plea. Her argument overlooks defendant's Placer County probation. Defendant did not contest the court's finding that she was on probation in Placer County at the time of her plea. Since defendant was still on probation notwithstanding the unexpected termination of her Sacramento County probation, she was still subject to a prison sentence even if she was acquitted of the charges against her.

Not every mistake is good cause for withdrawing a plea. When a plea is premised on a *material* mistake of fact, then good cause may be established (see, e.g., *People v. Hollins* (1993) 15 Cal.App.4th 567, 574 [permit withdrawal of plea induced by a fundamental misrepresentation]; *People v. Coleman* (1977)

72 Cal.App.3d 287, 292 [same]), but a mistake which does not “overcome[e] the exercise of free judgment” does not establish good cause (*People v. Cruz, supra*, 12 Cal.3d at p. 566). The evidence in the instant case was substantial and the mistake regarding defendant’s Sacramento County probation status was not material and therefore does not establish good cause to withdraw the plea. It was not an abuse of discretion to deny defendant’s motion to withdraw from this very favorable plea.¹

II

Ineffective Assistance Of Counsel

Defendant contends trial counsel was ineffective for failing to ascertain her Sacramento probation status before advising her to admit to the probation violation.

“To establish entitlement to relief for ineffective assistance of counsel the burden is on the defendant to show (1) trial counsel failed to act in the manner to be expected of reasonably competent attorneys acting as diligent advocates and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel’s

¹ In 2010, defendant assaulted her 14-year-old son with a deadly weapon while she was on Sacramento County probation for felony child abuse. Since she committed her serious felony offense while she was on felony probation in separate Sacramento and Placer County cases, defendant was statutorily ineligible for probation absent a plea agreement with a stipulated disposition of probation. (Pen. Code, § 1203, subd. (k); see *People v. Hester* (2000) 22 Cal.4th 290, 295 [unauthorized sentence cannot be challenged on appeal when part of a stipulated sentence so long as the trial court did not lack fundamental jurisdiction].)

failings. [Citations.]” (*People v. Lewis* (1990) 50 Cal.3d 262, 288.)

Since the status of defendant’s Sacramento County probation was not material to the plea agreement, defendant could not be prejudiced by trial counsel’s failure to find out probation in that case was terminated before defendant entered her plea. Accordingly, we reject defendant’s contention.

DISPOSITION

The judgment is affirmed.

_____ ROBIE _____, Acting P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.