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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,  
  
                    Plaintiff and Respondent,  
  
                    v.  
  
JERSON DAVID PEREZ,  
  
                    Defendant and Appellant.

C070463

(Super. Ct. No.  
NCR82877)

Following his plea of guilty to possession of concentrated cannabis (Health & Saf. Code, § 11357, subd. (a)),<sup>1</sup> defendant Jerson David Perez moved to withdraw his plea. The court denied the motion. Defendant appeals this denial as an abuse of discretion, claiming he demonstrated good cause. We affirm.

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<sup>1</sup> Undesignated statutory references are to the Health and Safety Code.

## RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY<sup>2</sup>

Defendant and five codefendants were charged with cultivating marijuana (§ 11358). After waiving his right to a preliminary hearing, defendant was held to answer. The information was subsequently amended to charge defendant with possessing concentrated cannabis. (§ 11357, subd. (a).) Defendant pleaded guilty to possessing concentrated cannabis in exchange for a stipulated low term of 16 months' incarceration. The charge of cultivating marijuana was dismissed. An interpreter was provided for defendant. The interpreter translated the Acknowledgment of Rights and Defendant's Waiver for Entry of Guilty Plea form to defendant and defendant indicated he understood the contents of the form and initialed it. In entering his plea, defendant expressly waived his rights. He was advised of the consequences of his plea, indicated he did not need further discussions with his attorney and nothing was impacting his ability to think clearly or use good judgment. The parties stipulated to a factual basis for the plea. The court found the plea was free and voluntary and defendant's waiver of rights was knowing and intelligent.

Prior to sentencing, defendant moved to withdraw his plea because "at the time he entered his plea, he did not understand the proceedings as they were presented to him here in court."

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<sup>2</sup> Because of the issue raised on appeal, the substantive facts underlying defendant's conviction are not relevant and are not recounted.

The court denied the motion, finding "[t]here's no information that the Court has that would suggest that he did not understand. In fact, all of the information that the Court has is that he did understand, and was asked specifically if he did, and stated he did."

#### DISCUSSION

Defendant contends the trial court abused its discretion in denying his motion to withdraw his plea, as he demonstrated good cause showing his plea "was due to mistake and misunderstanding of the proceedings." The record does not reflect any such showing and we find no abuse of discretion.

Penal Code section 1018 permits the withdrawal of a plea where a defendant shows good cause by clear and convincing evidence. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1142.) Good cause can be established by "[m]istake, ignorance or any other factor overcoming the exercise of free judgment." (*People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.) In addition, where a defendant's plea is induced by misrepresentations of a fundamental nature, a judgment based upon the plea must be reversed. (*People v. Coleman* (1977) 72 Cal.App.3d 287, 292.) A plea may not be withdrawn, however, "'simply because the defendant has changed his mind.'" [Citations.] (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.) We review the denial of a motion to withdraw for an abuse of discretion. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496.)

Although both parties refer to defendant's statements in his request for a certificate of probable cause as the basis for his motion to withdraw his plea, those statements are not evidence. Nor was any of the information alleged in that certificate put before the court at the time of the motion to withdraw the plea. We review the trial court's exercise of discretion based on the evidence before it at the time it was made, and not by reference to evidence produced at a later date. (*People v. Welch* (1999) 20 Cal.4th 701, 739.)

Here, defendant's only proffer to the trial court on the motion to withdraw his plea was that he did not understand the proceedings as they were presented to him. The record does not support this claim. Defendant was provided with an interpreter. Through the interpreter, he was advised of his rights and repeatedly indicated he understood those rights. Defendant initialed each applicable provision of the waiver form. There is nothing in this record which supports defendant's claimed lack of understanding. Accordingly, the court did not abuse its discretion in denying the motion to withdraw the plea.

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

RAYE, P. J.

BLEASE, J.