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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN JAPHETH NORTON, JR.,

Defendant and Appellant.

D059634

(Super. Ct. No. RIF131614)

APPEAL from a judgment of the Superior Court of Riverside County, Roger A. Luebs, Judge. Affirmed.

Jonathan Japheth Norton, Jr., was charged with carjacking a vehicle being driven by the victim, James Jones (Pen. Code, § 215, subd. (a)). (All further undesignated statutory references are to the Penal Code.) Norton was alleged to have been a principal in the carjacking while knowing that another principal, Terrance Elliot White, was armed with a firearm (§ 12022, subd. (a)(1)). It was further alleged that he had a prior strike conviction (§§ 667, subs. (c) & (e)(1), 1170.12, subd. (c)(1)) and that he had a prior prison term commitment (§ 667.5, subd. (b)).

Norton pleaded guilty and admitted the truth of the allegations. He was guaranteed a sentence of 11 years in state prison.

Norton thereafter brought a motion to withdraw his guilty plea, which the court denied. Norton was sentenced to a prison term of 11 years—10 years on the carjacking conviction (twice the middle term due to his prior strike), plus one year for being vicariously armed with a firearm.

On appeal Norton asserts that the court erred by (1) failing to appoint new counsel and requiring him to present his motion to withdraw his plea in propria persona when one of the grounds for withdrawing his plea was ineffective assistance of counsel; and (2) approving his request to represent himself, without conducting an adequate inquiry under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), and not advising him that he had the right to newly appointed counsel for his motion to withdraw his plea. We affirm.

FACTUAL BACKGROUND¹

Because the facts underlying the charges against Norton are not relevant to his motion to withdraw his plea, we summarize them only briefly.

On July 24, 2006, at approximately 7:00 a.m., the victim, Jones, was driving his car through an alley in Moreno Valley, when a car approached him from the opposite direction. When the two vehicles were side by side, the driver asked Jones, "What you need?" The passenger, Norton's codefendant Terrance Elliot White, got out of the car and approached Jones's vehicle with a .380-caliber automatic pistol. White pointed the

¹ As this appeal arises from a guilty plea, we take the facts from testimony presented at the preliminary hearing.

gun at Jones and said, "Give me your car." Jones grabbed his cell phone and got out of his car.

Jones watched as his car was driven down the alley. At the corner, his car stopped and was approached by a third car, which was red. Jones saw Norton get out of the red car and get into the passenger seat of his car. The two cars drove off and Jones called the police.

Riverside County Sheriff's Sergeant Sergio Rodriguez, who was on motorcycle patrol that morning, heard the broadcast about the carjacked vehicle. He located two vehicles that matched the description of the vehicles involved in the carjacking. When one of the vehicles made an illegal turn, he activated his lights and siren and a high speed chase ensued through residential streets.

Deputy Gravatt, who was in a patrol car, joined in the chase. He heard a broadcast about a car crashing into another car in a driveway on Pepper Street and the suspects running into the house. When police arrived, Norton and White were removed from the house and arrested.

Jones got his Ford Escort back on the evening of the day it was carjacked. A couple of days later, after damage to the car had been repaired, Jones discovered a .380-caliber handgun, wrapped in a green handkerchief, beneath his driver's seat. Jones recognized the gun as the one that had been pointed at him, and he turned the gun over to law enforcement.

DISCUSSION

I. *BACKGROUND*

A. *Norton's Guilty Plea*

At the hearing on Norton's guilty plea, the court explained to Norton the substance of the plea. He would plead guilty to carjacking, and would receive a middle term sentence of five years, doubled because of his prior strike conviction. Norton would also admit that another principal was armed with a gun, which would add another year for a total sentence of 11 years in state prison. Without the plea agreement, his maximum exposure on the charges would have been 19 years. The court then asked if Norton had already been sentenced in his other case.² Counsel informed the court that Norton "got life on each of the three charges" on that homicide case. The court asked if the sentence in this matter would be imposed concurrently or consecutively. The prosecutor advised the court that the sentences would run concurrently.

The court then questioned Norton about the plea form he had initialed and signed. Norton said he understood his rights and that no one had threatened him.

However, Norton then said, "I'm taking this [plea], because I feel like my due process rights have been violated. If I don't take this, then I'm told it would be prosecuted as a third strike. No investigation has been done." He further stated, "So if I go to trial with nothing done I will get even more time. That is why I am taking this plea."

² *People v. Norton* (Super. Ct. Riverside County, 2010, No. RIF135374).

The court then asked if the parties would stipulate that the transcript of the preliminary hearing provided a factual basis for the plea. Defense counsel informed the court that he had not received the transcript from Norton's former counsel and asked if there was another factual stipulation they could agree on. The court asked about police reports, and the prosecutor said there were several reports.

The parties stipulated that the court could review a large stack of police reports. The court then stated it had "reviewed this stack of police reports, the initials and multiple supplemental reports," and found they contained a factual basis for the plea. The court then found "the pleas and admissions including that strike are knowing, intelligent, and voluntary."

B. Motion To Withdraw Plea

On February 22, 2011, Norton filed a handwritten motion to withdraw his guilty plea with the court. He identified three grounds for the motion. First, he claimed he had a right to a "fair tribunal" and that the court had the "'ministerial duty' to step aside and allow this motion to be addressed by a new judge."

The second ground was that his counsel had been ineffective in failing to investigate a motion to suppress evidence. He argued counsel was also ineffective in failing to prepare, failing to read the preliminary hearing transcript, and failing to make "any legal investigation critical for sentencing." He argued that counsel also failed to make a "'meritorious [section] 995 motion before advising his client to plead guilty.'" Norton also stated, "In the instant case the Court forced counsel to be ineffective when

proceeding without a lawful investigation, to allow [Norton] to make an informed decision how to proceed."

In ground three, Norton claimed the court's action constituted a violation of section 518 (extortion) because he was threatened with a longer prison sentence if he refused to agree to the plea bargain that was forced upon him.

C. Hearing on Motion To Withdraw Plea

At the hearing on Norton's motion to withdraw his plea, his counsel advised the court that the motion contained several claims of ineffective assistance of counsel and that the court "needs some showing in order to have the conflict panel represent him." The court responded that they would have to hold a *Marsden*³ hearing to see if Norton could present sufficient evidence to relieve counsel and appoint another attorney to represent him. A *Marsden* hearing was then held.

When the court went back on the record, after a recess, the court stated that it had "determined there was no basis to relieve Mr. Renk, [or] the public defender's office," and asked the parties how they wished to proceed. Defense counsel responded that because one of the grounds for withdrawing Norton's guilty plea was ineffective assistance of counsel, he was "not in a position to argue." Defense counsel recommended that Norton "go pro per at least for the purposes of having that one motion heard." When the court asked Norton if he wanted to go pro per, he responded, "Yes, sir." There was

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

then a pause in the proceedings to allow Norton to read and fill out a form entitled "Petition To Proceed in Propria Persona."

After Norton completed the form, the court asked him if he had initialed the six "paragraphs that basically explain all the reasons why it is a bad idea to represent yourself." Norton said he had.

The court then asked if Norton was ready to proceed with his motion to withdraw his guilty plea, and he responded, "Yes, sir." The court said it would hear from Norton first and added it had read his motion and asked him not to repeat what he had already set forth in writing.

Norton then said that this case "was tied into the homicide case," and there were things that needed to be investigated in case the homicide case was reversed on appeal and retried—"things like DNA, guns, all the stuff that is involved in this case like ID."

He then stated:

"Now I say my due process rights are violated, because I know I have the right to effective assistance of counsel and adequate investigation. I don't see how anybody could say I had an adequate investigation when nobody can show you one page of investigation that has been done for this case. Just pull one page up on this case. It hasn't been done, your Honor."

The prosecutor then told the court that when Norton pleaded guilty, the court relied on the police reports as a factual basis for Norton's plea. The prosecutor argued that there was not a lack of investigation and pointed out that at one point his then public defender had announced ready for trial. The prosecutor argued that there was no reason to allow Norton to withdraw his plea.

Norton responded that when the court looked at the police reports, it "just flipped through them real fast." He said the reason it took him so long to plead guilty was because he had not wanted to, but, "You said I had to plea [*sic*] guilty, so I plead guilty."

The court denied the motion to withdraw Norton's guilty plea, noting "how thoroughly the defendant and his counsel conferred regarding the matter." The court stated, "I can't find any basis for permitting him to withdraw his plea. [¶] It is simply a matter of him changing his mind and deciding it is, quote, not in his best interest. . . . So there is no sufficient showing to permit withdrawal of the plea and the motion is denied."

II. ANALYSIS

In this case, Norton does not challenge the court's denial of his *Marsden* motion. Rather, he asserts that he was denied his right to counsel during his motion to withdraw his guilty plea. This contention is unavailing.

In *People v. Smith* (1993) 6 Cal.4th 684, 695, upon which Norton relies in support of his position, the California Supreme Court noted that "at whatever stage of the proceeding, the defendant is not entitled to another attorney who would act in effect as a watchdog over the first." The high court continued, "We thus hold that substitute counsel should be appointed when, and only when, necessary under the *Marsden* standard, that is whenever, in the exercise of its discretion, the court finds that the defendant has shown that a failure to replace the appointed attorney would substantially impair the right to assistance of counsel." (*People v. Smith*, at p. 696.)

Here, as soon as the court became aware that Norton was claiming his attorney was providing him with ineffective assistance of counsel, the court held a *Marsden*

hearing, after which it determined there was no basis to relieve his attorney or the public defender's office. Thereafter, Norton *voluntarily* chose to waive the assistance of counsel and elected to argue the motion himself. Therefore, he did not have the right to have another attorney appointed.

Norton also asserts that the court failed to make an adequate inquiry under *Faretta, supra*, 422 U.S. 806, as to his right to have another attorney appointed to represent him during his motion to withdraw his guilty plea. We reject this contention.

In *Faretta, supra*, 422 U.S. at page 835, the United States Supreme Court held that "[w]hen an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits. [Citations.] Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'"

As discussed, *ante*, after Norton made the decision to represent himself in the motion to withdraw his plea, the court went through each of the six paragraphs on the petition to proceed in propria persona form and asked Norton if he understood the contents of each paragraph. In the first paragraph, Norton was advised that if he could not afford an attorney, one could be appointed to represent him. The court added that

Norton knew that was true because he had appointed counsel in both the instant matter and his homicide case. Norton agreed.

As to the second paragraph, the court asked Norton if he understood that indigent defendants generally benefitted from the appointment of counsel because such defendants did not have the legal experience and training that counsel had. Norton stated that he understood that.

With the third paragraph, the court advised Norton that if he represented himself, he would be proceeding without the assistance of counsel, he would not be provided any special assistance, and he would have to follow the rules. When he the court asked if he understood that, he responded, "Yes, sir."

As to the fourth paragraph, the court explained to Norton that he would be up against a highly educated and experienced prosecutor, and he would not receive any special treatment or consideration. Norton stated he understood.

The court indicated the fifth paragraph listed all the things he would potentially have to do without counsel. Norton said he understood. The court advised Norton that the sixth paragraph explained that if he represented himself, he gave up his right to raise ineffective assistance on appeal. Norton responded that he understood.

Based upon the foregoing, the record demonstrates that the court ensured that Norton's waiver of counsel for his motion to withdraw his guilty plea was knowing and intelligent. Therefore, we reject Norton's claim that the court failed to adequately advise him as to the consequences of his decision to represent himself on his motion to withdraw his guilty plea.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.