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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JENNIFER FAITH STERNS,

Defendant and Appellant.

D061040

(Super. Ct. No. SCD220435 &
SCE302326)

APPEAL from a judgment of the Superior Court of San Diego County, Lantz Lewis, Judge. Affirmed.

This appeal arises from two separate criminal cases that resulted in a final plea bargain. In March 2010, Jennifer Faith Sterns entered a guilty plea to burglary (Pen. Code,¹ § 459) in case SCD220435 as part of a plea agreement. The parties agreed to dismiss the remaining charges and allegations and agreed to a stayed two-year sentence subject to a grant of probation.

¹ All further statutory references are to the Penal Code unless otherwise specified.

While Sterns was pending sentence in the first case, she was charged in case SCE302326 with forgery (§ 476) and a drug-related misdemeanor. Pursuant to a plea agreement, Sterns entered a guilty plea to the forgery count and admitted a serious/violent felony prior conviction (strike prior). The parties stipulated to a 40-month sentence, which was based on the 16-month lower term for forgery, doubled because of the strike prior, plus a consecutive eight months for the burglary count in SCD220435.

Sterns filed a motion to withdraw her guilty plea and new counsel was appointed for her. Thereafter the trial court conducted an evidentiary hearing, after which it denied the motion. Sterns was sentenced in accordance with the guilty plea. Sterns was granted a certificate of probable cause.

STATEMENT OF FACTS

Since the issues involved in this appeal do not relate to the facts of the underlying offenses, we will omit the traditional statement of facts. Instead, we will discuss the testimony taken at the motion to withdraw the plea in our discussion section.

DISCUSSION

On June 9, 2011, Sterns entered a guilty plea to forgery and admitted the strike prior. The trial court conducted a lengthy discussion of the guilty plea with Sterns and inquired at length as to her understanding of the plea and its consequences. Sterns also conferred with counsel during the plea hearing and submitted a signed and initialed change of plea form. Prior to sentencing Sterns moved to withdraw her guilty plea. The stated grounds in the trial court, and in this court, are that she was emotionally distraught, was affected by medication and did not understand what was happening. She also

contends that she was confused by the plea agreement, in that she did not know that under the stipulated sentence she could not move to strike the serious/violent felony prior conviction.²

A. *The Change of Plea Proceedings*

As we have noted the trial court had a lengthy discussion with counsel and Sterns, on the record, before the taking of the guilty plea. During those comments, the court made it clear that it would likely not grant a *Romero* motion given Sterns's lengthy criminal history. The plea agreement was explained, and was based on there being a valid admission of the strike prior. It was explained that the sentence would be calculated at the low term of 16 months, which would then be doubled because of the strike prior to 32 months. The court explained it would then impose a consecutive eight months for the earlier case. When Sterns had questions she was referred to counsel and had a discussion, off the record, with her attorney.

The court did not engage in a perfunctory plea process, but instead talked at length with Sterns to make sure she understood the proceedings. In one exchange the court addressed Sterns's medication and understanding:

"Court: I'm aware of [your] medical condition And you appear, even though you might be undergoing some type of medication, you appear to be thinking clearly; is that correct?"

"Appellant: I don't have any medication. Yes. Yes. . . ."

² The parties continue to refer to this latter issue as a "*Romero* motion." (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.)

"Court: What I'm asking about right now is your ability to follow what's occurring in the courtroom. Are you following it, ma'am?"

"Appellant: Yes.

"Court: Do you understand it?"

"Appellant: Yes.

"Court: Okay. You give up important rights if you plead guilty. All of these rights are prominently highlighted on this form. I see your initial indicating that you have reviewed these rights and understand them. Is that correct?"

"Appellant: Yes. Yes."

When Sterns raised a question about whether a *Romero* motion "could happen" she was referred to her attorney. After conferring with counsel she was asked by the court whether she understood everything and she said: "Yes, Yes, Yes."

B. The Motion to Withdraw the Guilty Plea

At the hearing on her motion, Sterns testified and also called her mother to testify. The prosecution called defense counsel to testify as well. Sterns testified she had been crying at the time of the plea; that she was suffering from her medical condition arising from surgery; that it was all a "big blur"; that she was taking medication; she did not know she signed a plea agreement and that although her attorney explained the process to her, she was upset and did not understand.

Sterns's mother testified she was present in court at the time of the plea. Although she did not speak to Sterns, her mother believed she did not understand what was going on.

Defense counsel testified that he had thoroughly explained the options available to Sterns. He told her she could go to trial. She could bring a *Romero* motion, which would likely be unsuccessful, or take the plea offer. Counsel testified that he believed Sterns understood her options and the court's explanation of why a *Romero* motion would not likely be granted.

C. Legal Principles

Section 1018 provides that before judgment the court may allow a defendant to withdraw a guilty plea if good cause is shown. Examples of good cause are mistake, ignorance, or any other factor that would overcome the person's free will. The defendant has the burden of showing good cause by clear and convincing evidence. (*People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Nance* (1991) 1 Cal.App.4th 1453, 1456-1457.) In determining whether a defendant has shown good cause, the trial court is not bound to accept the defendant's assertion as true. It is for the trial court to weigh the credibility of the witnesses, including the defendant. (*People v. Beck* (1961) 188 Cal.App.2d 549, 553-554.)

Similarly, a trial court is not bound to accept a defendant's assertion that he or she was confused or that emotion overcame the person's free will. Such determination again depends on the court's assessment of the defendant's mental state at the time of the plea, and the credibility of the defendant's later efforts to recant previous admissions. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1206-1208.)

Finally, the decision to grant or deny a motion to withdraw a guilty plea is vested in the sound discretion of the trial court. Like all other discretionary decisions, we will

not overturn such decision in the absence of a clear showing of an abuse of that discretion. (*People v. Mickens* (1995) 38 Cal.App.4th 1557, 1561; *People v. Ledesma* (2006) 39 Cal.4th 641, 705.)

D. Analysis

The trial judge who ruled on the motion to withdraw the plea was the same judge that presided over the taking of the plea. The judge made clear he had a good recollection of the events surrounding the plea and had carefully examined the transcript of the change of plea. The judge noted he had gone to some lengths to make very sure that Sterns understood everything that was happening. After hearing testimony at the motion, the judge concluded Sterns had not made the requisite showing of good cause by clear and convincing evidence. That finding is clearly supported by the record.

The plea discussions were extremely thorough. Sterns's later claims of everything being a "blur" and that she did not know she signed the change of plea form could easily be found not to be credible. Her explanation of why she said she was not taking medications when she later claimed she was taking an unnamed medication, does not make sense. Her explanation of all of her direct answers to questions that she was told to just say yes to everything, is likewise of doubtful credibility.

In short, after a thorough examination of the defendant at the time of the plea, and an implied rejection of her later efforts to explain away her answers, the trial court acted well within its discretion to deny the motion to withdraw the guilty plea.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

McINTYRE, J.