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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. SEAN BECK, Defendant and Appellant.	D062468 (Super. Ct. No. SCE315009)

APPEAL from a judgment of the Superior Court of San Diego County, John M. Thompson, Judge. Affirmed.

Sarah E. Kleven, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael T. Murphy and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

Sean Beck entered into a plea agreement, under the terms of which he pled guilty to attempted battery on an officer while confined in a state prison. (Pen. Code,[1] §§ 664 & 4501.5.) Beck also admitted a serious/violent felony prior conviction (strike prior) and a prison prior. (§§ 667, subds. (b)-(i) & 667.5, subd. (b).) Pursuant to the agreement the court struck the strike prior and the prosecution dismissed the prison prior. Beck was sentenced to the agreed upon one-year term, consecutive to his current prison sentence.

Beck filed a timely notice of appeal and the court granted him a certificate of probable cause. (§ 1237.5.)

In his appeal, Beck contends the trial court failed to provide him a full opportunity to state the reasons for his postplea request to replace trial counsel as required by *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). We are satisfied that Beck was provided an adequate opportunity to express his concerns with counsel and that nothing presented by Beck required the trial court to grant his "*Marsden*" motion.

STATEMENT OF FACTS

The facts of the offense are not in issue in this appeal. It is sufficient to note that Beck was charged with willfully committing a battery on a prison correctional officer. He was permitted to plead guilty to an attempt to commit that offense pursuant to *People v. West* (1970) 3 Cal.3d 595.

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

DISCUSSION

At the time of his guilty plea, Beck was facing a potential sentence, if convicted, of eight years, consecutive to his current prison sentence. Although he was not willing to admit the act charged, he entered into a plea agreement in order to mitigate his sentence. The result of the negotiations was a sentence of one year.

Following his guilty plea, Beck filed a letter with the court expressing his desire to withdraw his guilty plea. In the letter he explained that he did not commit the crime, that counsel had misinformed him that his strike prior would double his sentence; that he was being punished too harshly by the prison and described the many problems his family was having in his absence.

Several days later, the court conducted a *Marsden* hearing to allow Beck to express his concerns about counsel. The court asked Beck to explain what his counsel had done, or failed to do that required that she be removed from the case. In the explanation that followed, Beck continued the theme of his letter focusing on personal issues and not offering anything specific to counsel. Beck's earlier assertion in his letter about being misinformed that the strike prior could double his term was shown to be incorrect, because had the strike prior remained in the case, there is no dispute whatever term was imposed would have to be doubled.

Beck told the court:

> "Well, sir, . . . it really wasn't about Ms. Hirr [defense counsel]. More or less, my--my own personal feelings about the case and my personal things going on outside of jail and, you know, just my home. Things are going on at home. And with me being due to be released in August this year, you know, I mean, I guess I can explain

> to the court my feelings. But I know my personal life doesn't have to do with [the] court system and jail time, but it's my personal things going on as far as my family."

The court thereafter advised Beck that if he did not have a reason to remove counsel, that it would be up to defense counsel to determine whether to file a motion to withdraw the guilty plea. The court explained that could not be done that day but would require a written motion. Beck made no other statements regarding the issue of replacing trial counsel.[2]

A. Legal Principles

The court in *Marsden, supra*, 2 Cal.3d 118, created a process for defendants in criminal cases to ask trial courts to replace their court-appointed counsel, provided they can articulate sufficient reasons for replacing counsel. The *Marsden* process requires the court to provide an opportunity for a defendant to explain his or her reasons for replacement of counsel.

Once the defendant has been given the opportunity to raise the issues with the trial court, the court then must exercise its discretion to grant or deny the request to relieve counsel. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1085.) The decision to grant or deny a *Marsden* motion is vested in the sound discretion of the trial court and will not be

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[2] We note from the transcript of the *Marsden* hearing that the court referred to defense counsel by her first name, Karen, on a number of occasions. Such references were not made in the public sessions. At the close of the *Marsden* hearing when the court asked to have the prosecutor return to the court the prosecutor was referred to as mister. It appears that defense counsel may frequently be in this particular courtroom and we discern not intentional disrespect for her. However, we consider it inappropriate to refer to the male attorney as "mister" and the female attorney by her first name. Indeed we doubt that it is useful to refer to any counsel on the record by their first names.

overturned on appeal in the absence of a clear showing the trial court abused its discretion. (*Ibid.*)

B. Analysis

In the present case, Beck does not contend the trial court's decision to deny his motion was an abuse of discretion based on what Beck told the court. Rather, he contends the trial court unfairly cut off Beck's presentation and thus he was not able to explain why counsel should have been replaced. The record does not support his contention.

We note that Beck first advised the court of his issues with counsel in a letter directed to the court. The court thereafter conducted a closed hearing with Beck and counsel to give Beck a chance to further explain his concerns. As we have set forth above, Beck then told the court his problems were not really with defense counsel, but were personal problems arising from family and personal issues. There is nothing in the transcript of the *Marsden* hearing which supports the conclusion the Beck was "cut off" from fully presenting his views. Neither Beck nor counsel gave any indication that he had further information to offer.

We also consider Beck's verbal comments to the court in light of his previous letter. The nub of his complaints in the letter was that he was not guilty, wanted to withdraw his plea, and that he was being unfairly punished. His complaint about counsel was that he was misinformed as to the strength of the case and regarding the impact of being found guilty with a strike prior. He claimed his counsel was wrong when she told him the strike would double his sentence, a fact now undisputed as correct. Interpreting

his letter, it appears Beck was confused by the prosecutor's remark at the time of the plea that the prison prior was not valid, which remark had nothing to do with the validity or effect of the strike prior.

In sum, we find nothing in the record to support the contention that Beck had some other concerns about counsel that he did not express in his letter. Thus we are satisfied Beck had a full and fair opportunity to present any issues he had regarding the performance of trial counsel. We note Beck does not challenge the merits of the decision to deny the *Marsden* motion or the decision of trial counsel to decline to bring a motion to withdraw the guilty plea.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.