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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE NARANJO,

Defendant and Appellant.

D064685

(Super. Ct. No. SCD216914)

APPEAL from a judgment of the Superior Court of San Diego County, David J. Danielsen, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Ryan H. Peeck, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Jose Naranjo appeals from a judgment, which was vacated and reinstated to allow him to exercise his appeal rights after he received federal and state habeas relief. Naranjo contends we must reverse the judgment because the trial court erroneously denied his motion to withdraw his guilty plea and became excessively involved in the state habeas proceedings. He alternatively contends we must reverse his sentence because the trial court erroneously failed to recalculate his presentence custody credits before it reinstated the judgment. We are unpersuaded by these contentions and affirm the judgment.

BACKGROUND

I

Naranjo dated the victim for about 10 years.¹ On the evening of the day he ended their relationship, she went to a nightclub, which upset him.² He drove to her home the next evening and she came outside to talk to him. She got into his truck and he started hitting her in the face. She tried to get out of the truck and escape, but he pushed her back inside and resumed hitting her.

He continued hitting her as he drove her to a carpentry shop about six minutes away from her home. When they arrived at the shop, he insulted her and threatened to kill her. She removed her shoes, ran away, and yelled for help. He caught her and they

¹ We derive our summary from the evidence presented at the preliminary hearing.

² In a later hearing, Naranjo testified the victim had misbehaved because Naranjo refused to leave his wife and children for her.

fell to the ground. He covered her mouth and nose with his hand and told her to stop yelling.

He took her back to the shop. As he was trying to open the shop door, she ran away again and tried to dial 911 on her phone. He caught her by her hair and took the phone from her. She passed out. He lifted her and carried her toward the shop. She regained consciousness along the way. He then put her down and they walked into the shop, where, after securing the door, he told her he was going to chop her into little pieces using the table saw.

He started moving toward the table saw and she begged him not to hurt her. He pulled her up and took her to a stool. He asked her why she had disrespected him by going to the nightclub. He bent her over the stool, pulled her pants down, put his penis into her vagina and started moving. She cried and told him she did not want him to do what he was doing. He told her she had asked for it by going to the nightclub.

He then took her off the stool, put her on the floor, and began moving his penis in and out of her rectum. She told him he was hurting her and she could not breathe because her nose was bleeding, but he did not stop.

After he ejaculated, he had her get dressed and get back into his truck. He ran an errand and then took her home. She pretended everything was fine and kissed him goodbye. When she got to her door, she called the police. Her injuries included bleeding, a fractured nose, bites on her back, and injuries to her right thigh.

II

Naranjo pleaded guilty to forcible rape (Pen. Code, § 261, subd. (a)(2)),³ sodomy by use of force (§ 286, subd. (c)(2)), assault likely to produce great bodily injury (§ 245, subd. (a)(1)), and making a criminal threat (§ 422). As to the assault charge, Naranjo also admitted he personally inflicted bodily injury on the victim (§ 12022.7, subd. (a)).

In exchange for the guilty plea, the People dismissed charges of kidnapping (§ 207, subd. (a)), and assault with intent to commit rape (§ 220, subd. (a)). The People also dismissed allegations under section 667.61, subdivisions (a) and (b), which would have exposed Naranjo to sentences of up to 25 years to life for the forcible rape and sodomy by force convictions.

Approximately a month after his plea, Naranjo personally filed a motion to withdraw his plea and dismiss his appointed counsel from the public defender's office. In his motion, he claimed he entered the plea agreement "out of misunderstanding, fear, and frustration . . . coupled with undue pressure by counsel." (Some capitalization omitted.) He further claimed he had lost confidence in his counsel because his counsel was preoccupied with another case, had only briefly visited with him on two occasions, and had failed to provide him with copies of discovery. He concluded the motion by asserting he believed "his entry into the aforementioned plea-agreement was a gross error on his part, fueled by less than competent counsel advisement." (Some capitalization and underlining omitted.)

³ Further statutory references are also to the Penal Code unless otherwise stated.

The next day the court relieved the public defender's office and appointed counsel from the alternate public defender's office to represent Naranjo. A few days later, his new counsel filed a new motion to withdraw the guilty plea on Naranjo's behalf and referenced Naranjo's original motion as a supporting declaration.

After conducting an evidentiary hearing on the matter, the trial court denied the motion and imposed a stipulated sentence of 18 years and 8 months in prison. Naranjo did not file a timely notice of appeal and did not obtain a certificate of probable cause.

The following year, Naranjo filed petitions for writ of habeas corpus in the trial court, this court, and the California Supreme Court. The petitions were all denied. Naranjo then filed a petition for writ of habeas corpus in the federal district court. In reviewing the petition, the district court found Naranjo's trial counsel provided ineffective assistance by failing to file a notice of appeal for Naranjo or to consult with Naranjo about filing a notice of appeal. The district court issued an order stating it would grant Naranjo's petition on this ground unless the trial court "vacates its June 3, 2009 order and judgment and then reinstates that order and judgment, thereby allowing [Naranjo] to initiate the appeal process from the reinstated judgment by seeking a certificate of probable cause."⁴

Upon receiving the federal district court's order, the trial court appointed counsel from the Office of Assigned Counsel to represent Naranjo in any related state court

⁴ The Ninth Circuit later briefly stayed Naranjo's release pending further state and federal court proceedings.

proceedings. Naranjo subsequently filed a petition for writ of habeas corpus in the trial court. The parties stipulated to the granting of habeas relief to effectuate the district court's order. The trial court vacated the judgment and then immediately reinstated it. Naranjo filed a notice of appeal and the trial court granted him a certificate of probable cause.

DISCUSSION

I

Denial of Motion to Withdraw Plea

A

1

As part of the guilty plea process, Naranjo signed and initialed a guilty plea form. Among its provisions, the form advised Naranjo of his pertinent constitutional rights, which he acknowledged he understood and was giving up. He also acknowledged he was entering his plea "freely and voluntarily, without fear or threat to me or anyone closely related to me."

Additionally, before accepting Naranjo's guilty plea, the trial court, aided by an interpreter, engaged in a discussion with him. During the discussion, the trial court queried and Naranjo acknowledged: (1) he understood the terms of the plea agreement; (2) no one had threatened or forced him into changing his plea; (3) the contents of the guilty plea form had been translated for him and he understood the contents as translated; (4) he understood he possessed and was giving up his constitutional rights to a jury trial, to confront adverse witnesses, to remain silent, and to present evidence in his own

defense; (5) he would receive the maximum sentence of 18 years and 8 months in prison for his offenses; and (6) each offense qualified as a prior strike. After the discussion, the trial court accepted Naranjo's guilty plea, finding he knowingly, voluntarily, and intelligently waived his constitutional rights and he understood the nature of the charges and the consequences of the plea.

2

At the evidentiary hearing on Naranjo's motion to withdraw his plea, Naranjo testified his original trial counsel did not provide him with discovery or devote adequate time to his case. He also testified his guilty plea was not voluntary. Instead, he felt he had no other option. His original trial counsel told him if he did not agree to the guilty plea he would never be released from prison. After he signed the guilty plea form, he asked his original trial counsel to try to lower his sentence. He wanted a fair sentence requiring him to serve less time and resulting in fewer strikes on his record.

Naranjo's original trial counsel testified that, prior to Naranjo's decision to plead guilty, he had multiple communications with Naranjo about his case. He did everything Naranjo had asked of him and Naranjo never indicated to him he wanted to spend more time discussing it. He denied threatening Naranjo into accepting the plea bargain. However, he did advise Naranjo a life sentence was possible if Naranjo was convicted of some of the charges and some of the enhancements were found true.

Following the evidentiary hearing, the trial court denied the motion, finding Naranjo had failed to show the guilty plea was the result of mistake, ignorance, duress, fraud, or inadvertence. Instead, the trial court found Naranjo had been "given a very

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difficult choice of a very lengthy determinate prison sentence or facing a very real possibility of life in prison" and he had "buyer's remorse."

B

1

Naranjo contends his guilty plea was the result of duress and the trial court erred in denying his motion to withdraw it. We disagree.

A trial court may allow a defendant to withdraw his guilty plea if the defendant establishes good cause for doing so. (§ 1018; *People v. Archer* (2014) 230 Cal.App.4th 693, 702.) To establish good cause, a defendant must show by clear and convincing evidence his guilty plea was the result of mistake, ignorance or another factor, including inadvertence, fraud, or duress, which overcame his exercise of free judgment. (*People v. Archer, supra*, at p. 702.) A defendant's change of heart does not provide good cause for allowing the defendant to withdraw his guilty plea. (*Ibid.*)

We review a trial court's decision to deny a motion to withdraw a guilty plea for abuse of discretion. In conducting our review, we adopt the trial court's factual findings if supported by substantial evidence. (*People v. Archer, supra*, 230 Cal.App.4th at p. 702.)

2

In this case, substantial evidence establishes Naranjo's guilty plea was not the result of any factor overcoming his exercise of free judgment. He expressly denied acting under duress at the time he entered his guilty plea. In addition, his decision to plead guilty was a reasonable, albeit difficult, choice between a lengthy determinate

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sentence, providing him assurance of being released from prison one day, or an indeterminate sentence, providing him no assurance of ever being released from prison. Naranjo's original trial counsel truthfully conveyed this difficult choice to Naranjo. While Naranjo faults his original trial counsel for not devoting more time to this case, Naranjo does not identify anything his original trial counsel could or should have done differently in handling this case. Moreover, Naranjo did not claim he wanted to withdraw his plea because he believed the charges against him were defensible and he wanted a jury trial. Rather, the only relief he sought through his motion was a better deal than the one he accepted. This fully supports the trial court's conclusion Naranjo simply had "buyer's remorse." Accordingly, we conclude Naranjo has not established the trial court abused its discretion in denying his motion to withdraw his guilty plea.

II

Excessive Judicial Involvement

A

The federal district court's order stated it would grant Naranjo's federal habeas petition unless the superior court vacated and reinstated the judgment, which would allow Naranjo an opportunity to appeal it. The trial court believed it lacked jurisdiction to vacate and reinstate the judgment unless Naranjo filed a new state habeas petition seeking this relief.⁵

⁵ We do not address the propriety of the trial court's belief because it was not placed at issue in this appeal.

After consulting with both his state appointed counsel and his federal appointed counsel, Naranjo initially declined to authorize his counsel to file a new state habeas petition. The trial court was prepared to conclude the state court proceedings and defer to the federal district court regarding the appropriate next step. Before the state court proceedings concluded, the People requested the trial court advise Naranjo of the possible consequences of commencing state criminal proceedings anew. The trial court agreed Naranjo should be advised of these consequences. The court informed Naranjo:

"THE COURT: . . . I want to make it clear that I am not in any way threatening you or trying to get you to change your mind simply because something really bad could happen to you if you continue in the path that you are going. But if, in fact, the current deal which you agree[d] to is somehow set aside . . . in the case against you, and given the way that the law in California is structured for the type of case that you are facing, you could in fact get a much harsher sentence up to and including a life-in-prison sentence. [¶] Do you understand that?

"[NARANJO]: I understand that very clearly.

"THE COURT: And right now, the current sentence that you have, although it is a long sentence, there is a time when you will be released on parole. [¶] When you receive a life sentence for the type of crime you have committed, although there is theoretically a time for which you would be eligible for parole, there is a significant issue whether you would ever be released from the state prison. [¶] Do you understand that? [¶] . . . [¶]

"[PROSECUTOR]: 64 years to life. 64 years would be the determinate portion.

"THE COURT: Okay. Do you understand that?

"[NARANJO]: Yes.

"THE COURT: And if in fact you were to be maxed out on this, you would be eligible for a parole hearing in about 64 years. [¶] Do you understand?

"[NARANJO]: Yes."

At the People's request, the trial court then advised and queried Naranjo:

"THE COURT: Mr. Naranjo, you do have the right to file your request in the form of a habeas petition here in this court, the same request that you are making in the federal court. [¶] Do you understand that?

"[NARANJO]: Yes

"THE COURT: I understand you have instructed your lawyers not to do that. Correct?"

At this point, Naranjo's federal counsel interjected and asked for more time for him and Naranjo's state counsel to discuss the matter with Naranjo. The court responded,

"THE COURT: Counsel, as an officer of the court, you can't represent to the court that that is an open question at this point. You previously told me you can't file it. Right?

"[FEDERAL COUNSEL]: That is correct.

"THE COURT: He needs to acknowledge that. [¶] You have instructed your lawyers not to file a habeas in this court, correct?"

Naranjo's state counsel then interjected and asked for a few minutes to speak with Naranjo. The court took a recess after which Naranjo's state counsel indicated Naranjo was giving the matter some more thought since the choice was complicated.

The court disagreed the choice was complicated or necessitated further delay because Naranjo had been informed how to proceed to get the relief he wanted, he had the opportunity to receive advice from both his state and federal counsel, and he simply needed to make a decision. The court then once again queried whether Naranjo was instructing his counsel not to file a new state habeas petition. Naranjo's state counsel responded that Naranjo was now instructing counsel to file the petition. At the People's request, the trial court had Naranjo confirm on the record this was, in fact, his instruction to counsel.

Within two weeks, Naranjo's state counsel filed the petition on Naranjo's behalf. The next day Naranjo filed a letter stating: (1) he fired his state counsel; (2) he did not want to file a new state habeas petition; and (3) his state counsel deceived him into doing so.

A few days later, in response to Naranjo's letter, the trial court conducted a hearing under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) and declined to replace Naranjo's state counsel. After the *Marsden* hearing, the court asked Naranjo whether he wanted to withdraw his new state habeas petition. The court expressed concern that, if Naranjo withdrew the petition, he might inadvertently be harming his federal case.

Naranjo's state and federal counsel conferred with him and his state counsel subsequently represented Naranjo did not want to withdraw the petition. Naranjo confirmed on the record counsel's representation was true. The parties then stipulated to the merits of the petition and the court granted the requested habeas relief by vacating and reinstating the judgment.

B

Naranjo contends we must reverse the judgment because the trial court became excessively involved in the case by pressing him to file a new state habeas petition and appointing state counsel to represent him without first determining he wanted representation. Although Naranjo analogizes this case to cases in which trial courts were excessively embroiled in plea negotiations, the record does not factually support the analogy or Naranjo's characterization of the trial court's actions.

The colloquies cited by Naranjo as examples of excessive judicial involvement reflected the trial court's efforts to ensure Naranjo understood the potential adverse consequences of reopening his criminal case versus proceeding in a manner assured to allow him to preserve his determinate sentence while he pursued his appeal rights. Likewise, the trial court's reluctance to give Naranjo more time to consider the matter reflected the trial court's recognition it had limited time to comply with the federal district court's order and Naranjo had already decided, after consulting with his counsel, not to file a new state habeas petition. The trial court merely wanted to get Naranjo's decision on the record so the matter could be returned to the federal district court to decide the appropriate next step. It was Naranjo's federal and state counsel, not the trial court, who wanted him and persuaded him to rethink his decision and file the new state habeas petition.

The fact the trial court decided to appoint state counsel to represent Naranjo after it received the federal district court's order does not alter our conclusion. In all state court proceedings where Naranjo has had a right to counsel, he has had appointed counsel.

While he has been consistently dissatisfied with his state appointed counsel's efforts to get him the sentence he believes he deserves, he has never even hinted he would prefer to be represented by retained counsel or to represent himself. In fact, before and during the *Marsden* hearing, he confirmed he wanted appointed counsel, just not the counsel he had.

Furthermore, there is simply no indication in the record the trial court appointed state counsel for Naranjo to bind him to a predetermined course of action. As the above colloquies show, the decision whether to proceed by filing a new state habeas corpus petition was left entirely to Naranjo based on the advice of both his federal and state counsel. The trial court's only avowed interests were complying with the federal district court's order to provide Naranjo with an opportunity for appeal and ensuring Naranjo understood the potential consequences of a decision that hindered the trial court's compliance efforts. As Naranjo received precisely the relief the federal district court intended, we cannot conclude the trial court's actions effectuating this relief warrants reversal of the judgment.

III

Recalculation of Presentence Custody Credits

Naranjo alternatively contends the trial court erred by failing to recalculate his presentence custody credits under section 2900.1 before it reinstated the judgment. Section 2900.1 provides, "Where a defendant has served any portion of his sentence under a commitment based upon a judgment which judgment is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited

upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts."

On its face, section 2900.1 does not apply here because the judgment against Naranjo has never been declared invalid or modified. Rather, the trial court mechanically vacated and reinstated the judgment solely as a means of providing Naranjo with an opportunity to exercise his appeal rights. Even if the trial court's actions had the effect of invalidating the judgment within the meaning of section 2900.1, Naranjo would not be entitled to additional presentence custody credit. When a criminal judgment is reversed and the matter is set at large, the defendant's prereversal prison time is treated as postsentence custody, not presentence custody. (*In re Martinez* (2003) 30 Cal.4th 29, 31; accord, *People v. Johnson* (2004) 32 Cal.4th 260, 263.) Accordingly, Naranjo has not established the trial court erred by failing to recalculate his presentence custody credits.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

McINTYRE, J.