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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL GERARD BLOSSOMGAME,

Defendant and Appellant.

E052701

(Super.Ct.No. FVI901754)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R.

Balderrama, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Alana Cohen Butler, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Carl Gerard Blossomgame pled no contest to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and admitted a

prior felony drug conviction enhancement allegation (Health & Saf. Code, § 11370.2, subd. (c)) as well as four prison prior enhancement allegations (Pen. Code, § 667.5, subd. (b)). Pursuant to his plea agreement, defendant was placed on drug court probation. He then violated his probation; the trial court imposed a total prison term of nine years consisting of the low term of two years enhanced by three years for the prior felony drug conviction, as well as one additional year for each of the four prison priors. Defendant challenges the denial of his request at the sentencing hearing that sentencing be continued so that he could get new counsel. We affirm.

### **BACKGROUND**

Defendant entered his plea on August 20, 2009. Defendant, his trial counsel, and the prosecutor signed a plea form. The form stated the charge to which defendant was pleading no contest, the enhancements he was admitting, and the relevant sentencing ranges. The form stated that the plea was because the district attorney agreed to drug court probation, counsel had explained that a possible consequence was a presumptive prison sentence, and a violation of probation may cause the court to send defendant to prison for the maximum term provided by law. Defendant informed the trial court that he had initialed the boxes on the form to signify that he had read and understood everything in the paragraph next to each box, and that he understood and agreed with everything on the form.

Defendant was placed on probation on November 23, 2009. He was represented by the same appointed counsel, from the trial court's conflict defense panel, at both his plea hearing and the sentencing hearing.

On January 28, 2010, defendant was arraigned on his probation violation; the trial court reappointed the conflict defense panel to represent defendant. His violation hearing was set for February 4, 2010. On February 4th it was continued to the 9th, on the 9th it was continued to the 18th, on the 18th it was continued to the 23rd, on the 23rd it was continued to March 18th, 2010. On March 18, 2010, the hearing was continued to April 26, 2010, with the minutes stating, “The defense is going to order a copy of a transcript from 8/20/09.”

On April 26, 2010, defendant’s trial counsel reported that defendant wanted a *Marsden*<sup>1</sup> hearing. The trial court commenced a *Marsden* hearing and asked defendant if he wanted his counsel to be relieved and another attorney appointed to represent him. Defendant indicated he did not want to be represented by anyone on “the entire Conflict Panel,” blamed his prior conflict panel attorney for his plea agreement having a potential sentence of 12 years, claimed the whole panel was biased against him and was trying to allow his plea bargain to go forward. He then claimed that on the date he entered his plea his case was getting dismissed but he asked for the drug court probation out of fear of how it would look if his case was dismissed without any consequences to the deputy he claimed planted drugs on him, and to his codefendant who was “an alleged motorcycle club member.” He next asserted that the judge had not reviewed the plea bargain with him and described his then-counsel as being out of the courtroom when the court started taking his plea.

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

Defendant's fundamental assertion was that he did not know his plea could result in a 12-year sentence. The trial court stated that defendant should have raised this dispute when his plea was being taken or when he was initially sentenced. The trial court then reviewed defendant's right to self-representation and directed that he be provided a *Faretta*<sup>2</sup> waiver. However, the trial court subsequently denied defendant's request to represent himself because he refused to complete the waiver form.

The trial court confirmed on the record that defendant's trial counsel was going to order the transcript from the August 20, 2009 hearing at which defendant entered his plea. The matter was then continued to May 17, 2010.

On May 17, 2010, the matter was again continued, this time to June 21, 2010, so that defendant could file a motion to withdraw his plea. On June 21, 2010, a continuance to August 10, 2010, was granted at the People's request.

On August 10, 2010, defendant again requested a *Marsden* hearing. Defendant contended his counsel had lied to him, and would not speak with the deputy who had passed defendant his plea form on August 20, 2009. His counsel denied lying to him and said that he had spoken with the deputy who did not have anything to say that would help defendant. Defendant again accused his counsel of lying to him, by having told him something different about the deputy earlier that day, and asserted that his counsel had not done "what [he] had asked him to do." The trial court then noted that

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<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 806.

defendant's motion to withdraw and writ of error *coram nobis* had been filed. The trial court then denied the *Marsden* motion.

Because the assigned prosecutor was not available on August 10, 2010, the matter was continued again to August 26, 2010. Because defendant's trial counsel was not available, the matter was continued to September 3, 2010.

On September 3, 2010, a hearing on defendant's motion to withdraw his plea or writ of error *coram nobis* was held. The parties and the trial court agreed that defendant's contention only sounded as a petition for a writ of error *coram nobis*. Defendant contended that he had not been informed that his plea contained a potential prison sentence of nine to 12 years. The trial court referred to the transcript from the plea hearing and noted that defendant had said he agreed with everything on his plea form and had enough time to go over the form with his counsel. The People noted defendant's significant experience with the criminal justice system and contended defendant had already received the benefit of his bargain by obtaining his drug court probation. The trial court denied the petition and noted that the plea form included the sentencing ranges, and that defendant would also have been aware of the sentencing ranges through the probation report prepared for his initial sentencing. Defendant personally interjected to state that his counsel "didn't explain anything the way I explained it to him." The trial court permitted defendant to offer his version. Defendant claimed his then-counsel had told him his case would be dismissed, but he had asked for drug court probation and signed as well as initialed the plea forms at the

direction of the courtroom deputy who had been left the form by defendant's counsel. The trial court then repeated that it was denying "the request to throw that plea out."

Defendant's trial counsel stated he was currently in trial; the trial court continued the matter to September 16, 2010, and noted that the conflict panel could review the files and find an appropriate replacement if necessary. Defendant stated, "I would prefer that."

After five more continuances, a probation revocation hearing occurred on November 19, 2010. The trial court found that defendant had violated the law. While setting a date for sentencing, defendant stated he had new evidence that if he had known about he would not have entered his plea. He then asserted he did not know how small the amount of narcotic he was alleged to have been found with, and then repeated his assertion that the case was being dismissed when he entered his plea.

On January 7, 2011, the trial court commenced sentencing by stating how it intended to sentence defendant. Defendant interjected that he "would like to postpone sentencing until I can get . . . new representation. I have been trying to—I have had several Marsden hearings for [defendant's trial counsel]." He then repeated his assertions that the plea bargain was not explained to him, was handed to him by the courtroom deputy, the amount of narcotic was insufficient, he had asked for the drug court probation out of fear of a codefendant, and he did not know his plea had a potential sentence of 12 years. The trial court denied the continuance request but noted that the low amount of narcotics, .02 grams, was why it was going to imposed the low term. Defendant continued to protest and requested he be sentenced by the original

judge. The trial court replied that it was going to sentence him based upon his plea. After additional discussion with counsel, the trial court imposed a total prison term of nine years consisting of the low term of two years (Health & Saf. Code, § 11379, subd. (a)) enhanced by three years for the prior felony drug conviction (Health & Saf. Code, § 11370.2, subd. (c)), as well as one additional year for each of the four prison priors (Pen. Code, § 667.5, subd. (b)).

### **DISCUSSION**

Defendant challenges the denial of his request at the sentencing hearing that sentencing be continued so he could obtain new counsel. Specifically, defendant contends that denying the continuance was an abuse of discretion that resulted in a deprivation of his right to due process. We hold that the trial court did not abuse its discretion.

“Continuances shall be granted only upon a showing of good cause.” (Pen. Code, § 1050, subd. (e).) “ “ “The trial court’s denial of a motion for continuance is reviewed for abuse of discretion.” [Citation.] “There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” [Citations.]’ [Citation.]” (*People v. D’Arcy* (2010) 48 Cal.4th 257, 287-288.) Defendants bear a heavy burden when attempting to show an abuse of discretion. (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282.)

“A criminal defendant has a qualified right to retain counsel of his choice.” (*People v. Ramirez* (2006) 39 Cal.4th 398, 422.) However, an indigent defendant who is seeking to substitute one appointed attorney for another must demonstrate either that appointed counsel is providing inadequate representation, or that an irreconcilable conflict exists. (*People v. Ortiz* (1990) 51 Cal.3d 975, 984.) Moreover, a trial court has a “wide latitude in balancing the right to counsel of choice against . . . the demands of its calendar.” (*United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 151-152.) “Thus, a trial court may ‘make scheduling and other decisions that effectively exclude a defendant’s first choice of counsel.’ [Citation.]” (*People v. Lynch* (2010) 50 Cal.4th 693, 725.)

Defendant, who was being represented by appointed counsel, requested a continuance after his sentencing hearing had already commenced so that he could “get new representation.” Defendant did not assert the ability to retain private counsel, but referenced his attempts under *Marsden* to replace his appointed counsel. Given that the parties were ready to proceed with sentencing, numerous continuances had previously been granted, the trial court had twice entertained *Marsden* motions, and the trial court had already addressed the substantive plea issue underlying defendant’s dissatisfaction with his counsel, good cause did not exist to justify granting another continuance. Accordingly, the trial court did not abuse its discretion by denying defendant’s request.

**DISPOSITION**

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

RICHLI  
J.

MILLER  
J.