

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD GEORGE CHAVEZ,

Defendant and Appellant.

E052895

(Super.Ct.No. FVA1001171)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson, Judge. Affirmed.

Neil Auwarter, 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, Gil Gonzalez, and Eric A. Swenson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ronald George Chavez (defendant) appeals after he pleaded guilty to possession of marijuana for sale. He contends that the plea was not knowing and intelligent, because his attorney failed to advise him that he might have a medical marijuana defense to the charges. The trial court denied defendant's motion to set aside his plea. We affirm.

FACTS AND PROCEDURAL HISTORY

A Rialto police officer stopped defendant's car for a traffic violation. When the officer approached the car to speak to defendant, he noticed the odor of marijuana emanating from inside the car. The officer asked defendant if he had marijuana; defendant said, "Yes," and stated that he had a valid medical marijuana certificate. A search turned up several clear plastic baggies containing marijuana (67 grams in total), and a digital scale. Defendant was also carrying \$580 in his pocket, consisting largely of smaller bills. The number of bills and their denominations were consistent with sales of marijuana, which is normally sold in quantities of \$5 or \$10 for personal use.

Defendant was charged with one count of possession of marijuana for sale (Health & Saf. Code, § 11359), and one count of transportation of marijuana (Health & Saf. Code, § 11360).

At his arraignment, i.e., before the preliminary hearing, defendant entered a guilty plea pursuant to a plea bargain. He pleaded guilty to count 1 (possession for sale), in exchange for dismissal of count 2 and a stipulated grant of probation (including a 180-day jail sentence as one of the conditions).

After the plea, but before the date of the sentencing hearing, defendant moved to withdraw his guilty plea. He alleged that his attorney had failed to advise him that he might have had a medical marijuana defense to the charge. He averred that his attorney never reviewed the police reports with him, and never discussed any possible defenses to the charges. He did not know that counsel had set the matter for preliminary hearing. According to defendant, his attorney approached him while he was sitting in the jury box and informed him that he could be released from custody that day if he accepted the plea offer. His attorney never informed him why he was in court that day, and never told him that he might have available defenses.

At the hearing on defendant's motion, his former attorney testified that she had reviewed the police report, including defendant's statements to the officer concerning his medical authorization to have the marijuana. She discussed the police report with defendant and went over the charges. She reviewed with him the indicia of sales that were present in the report. In addition, she reviewed potential defenses with him. She knew that defendant had a medical marijuana card and discussed that issue with him. Based on her discussions with defendant, she set the case for a preliminary hearing. On the date initially set for preliminary hearing, the attorney explained the proceedings to defendant. However, defendant instead decided to plead guilty that day. The attorney reviewed each item on the plea form with defendant, and explained what each clause meant.

The prosecutor argued that the attorney's testimony contradicted defendant's declaration that his attorney was not aware of defendant's medical marijuana authorization and had failed to discuss the matter with him. In addition, the possession of a medical marijuana authorization would not necessarily constitute a defense to the charges, because the legal authorization to possess marijuana for personal use would not be a license to sell marijuana to others. There were various circumstances which indicated that defendant possessed the marijuana not for personal use, but for sale, such as the number of bags of marijuana he carried, the presence of the digital scale, and the high quantity of cash on defendant's person, particularly in small bills. The trial court credited the attorney's testimony over defendant's declaration and denied the motion to withdraw the plea.

Defendant obtained a certificate of probable cause and filed this appeal.

ANALYSIS

I. The Trial Court Properly Denied Defendant's Motion to Withdraw His Plea

A motion to withdraw a guilty plea is confided to the discretion of the trial court. (See *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796.) "As a general rule, a plea of guilty may be withdrawn 'for mistake, ignorance or inadvertence or any other factor overreaching defendant's free and clear judgment.' (*People v. Butler* (1945) 70 Cal.App.2d 553, 561 [161 P.2d 401]; see also *In re Brown* [(1973)] 9 Cal.3d 679, 686, fn. 10.)" (*Id.* at p. 797, fn. omitted.)

Defendant has failed to show good cause to withdraw his plea, or that the trial court abused its discretion in denying his motion. He points to the testimony of his former attorney, to the effect that she was not aware of a specific eight-ounce limit, under Health and Safety Code section 11362.77, which a medical marijuana patient may “presumptively” lawfully possess. Even if the former attorney was unaware of the specific quantity (eight ounces) which may lawfully be possessed with a valid medical marijuana certificate, she was clearly aware that defendant had such a certificate and she testified to her belief that he was “licensed” to possess medical marijuana. She also testified expressly that she discussed the medical marijuana card, and “whether having that card is necessarily a defense to this particular case.” She further contradicted defendant’s claims that she never discussed the police report with him, never discussed possible defenses with him, and did not discuss the medical marijuana issue with him, before advising defendant on his change of plea.

Defendant also fails to demonstrate good cause to withdraw his plea, because his own evidence indicates that he at all times knew of the potential medical marijuana defense. He presented the certificate to the officer at the time of his arrest and explained that he purportedly possessed the marijuana pursuant to that legal authorization. Other circumstances, however, were highly suggestive that defendant was in fact selling marijuana and not simply possessing it for personal use. There may have been alternative explanations for defendant’s transporting a digital scale with him, but the excuse he gave to the arresting officer was that he used the scale to weigh marijuana when using it as an

ingredient in baking brownies; this statement did not explain why he decided to carry the scale in his briefcase, rather than leaving it in his kitchen. Defendant also carried an unusually large amount of cash, in small bills. This circumstance was consistent with possession of marijuana for sale. A certificate permitting a patient to use marijuana for medical purposes is not necessarily a license to transport marijuana at all times. The possession must be consistent with medical necessity. Defendant was carrying four different kinds of marijuana in four separate bags, in an amount which he himself stated was sufficient for 10 weeks of use. There was no medical necessity to transport 10 weeks' worth of doses at one time. This was another indicium that defendant likely possessed the marijuana for sale, rather than strictly for personal medical purposes.

Defendant was at all times personally aware both of the potential defense (medical use of marijuana) and the difficulties in proving that defense. In addition, his claim that his attorney never discussed the matter with him was not believed by the trial court. The court found, under all the circumstances, that defendant knowingly and voluntarily entered his plea. We defer to the trial court's findings of fact when supported by substantial evidence. (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 917.) Defendant has failed to demonstrate that the trial court abused its discretion in denying his motion to withdraw his plea.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.
RICHLI
J.