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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.

JOHN ROBERT BELLETT,

Defendant and Appellant.

E056764

(Super.Ct.No. RIF151602)

OPINION

APPEAL from the Superior Court of Riverside County. Ronald L. Taylor, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On July 23, 2009, a felony complaint charged defendant and appellant John Robert Bellett with burglary (Pen. Code, § 459, count 1);¹ petty theft with a prior (§§ 666, 484, subd. (a), count 2); making criminal threats (§ 422, count 3); and exhibiting a deadly weapon other than a firearm (§ 417, subd. (a)(1)).

On August 13, 2009, counsel indicated that there was a negotiated settlement. Defendant asked for a *Cruz*² waiver due to the death of his mother and because he had his own business wherein he needed to clear things up before his incarceration. Defendant asked the court for two to three weeks to take care of his business. The court stated that it understood defendant's request, but that the trustee could take care of the legal matters that needed to be resolved, and there was no need for defendant to be physically present. The court also noted that defendant's mother had passed away in January and assumed that defendant had already paid his respects as it was eight months since her death. The court told defendant that it did not believe it was a good idea to release him on a *Cruz* waiver because if defendant failed to show up, he would be sentenced to the maximum term. Defendant reiterated his reasons for requesting the waiver. The court then informed defendant that he should speak with his trustee because it was not inclined to grant defendant's request.

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

² *People v. Cruz* (1988) 44 Cal.3d 1247.

Thereafter, the court asked whether defendant wanted to go forward; defendant responded that he did. Defendant answered affirmatively that he went over the plea forms and understood his rights and the consequences of his plea. Defendant then pled guilty to counts 1 and 3. Defendant also admitted that on July 7 and July 11, 2009, he willfully entered a building with the intent to commit a theft. The prosecutor asked whether it was true that on July 7, 2009, defendant willfully and unlawfully with the specific intent that his statement be taken as a threat, threatened Timothy T., in violation of section 422. Defendant replied yes. The court found that the plea was free and voluntary. The court asked whether defendant wanted to set sentencing a few weeks down the road so that he could meet with the trustee in jail. Defendant, however, requested immediate sentencing.

The trial court sentenced defendant to two years in state prison for count 1, and eight months in state prison for count 3. The court imposed a restitution fine of \$200 and a parole revocation fine, stayed upon successful completion of parole, of \$200. The court also imposed a \$35 court security fee, a \$30 conviction fee, and a \$387.97 booking fee. The remaining counts were dismissed.

On June 15, 2012, defendant filed a petition for writ of error *coram nobis*. Defendant stated that he had “allegedly” entered a plea to criminal threats at a time which he was in substantial emotional distress and was advised within the time frame of his mother passing away. According to defendant, he personally requested a continuance based on distress and incompetence. He alleged that he then, “by no competent means,

entered any knowing plea to terrorist threats,” and was not sufficiently advised of the nature and consequences of such plea.

On the same day, the court denied the petition, finding that defendant failed to show due diligence in seeking relief and did not allege that he only recently discovered that his guilty plea was involuntary or that he was incompetent at the time he entered his guilty plea, nor did he explain why he delayed three years in seeking relief.

On July 19, 2012, defendant filed a notice of appeal from the denial of his petition for writ of error *coram nobis*.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has filed two. In his 15-page handwritten brief filed on January 25, 2013, defendant argues, in essence, that (1) he was entitled to a hearing on his competency at the time of the plea; (2) the evidence is insufficient to support his guilty plea as to count 3; and (3) his counsel rendered ineffective assistance of counsel (IAC). Also, in his 10-page handwritten brief with exhibits filed on March 20, 2013, defendant appears to be arguing the same contentions again: (1) he was incompetent at the time he pled guilty; (2) his

counsel rendered IAC; and (3) he is entitled to a hearing on his mental competency. We shall address defendant's contentions.

We note that this is not an appeal from the judgment in 2009; instead, this is an appeal from the denial of defendant's petition for writ of error *coram nobis*. A petition for writ of error *coram nobis* is reviewed under the standard of abuse of discretion.

(*People v. Tuthill* (1948) 32 Cal.2d 819, 821; *People v. Goodspeed* (1963) 223 Cal.App.2d 146, 156.)

A motion to vacate a judgment based on *coram nobis* principles may be granted “only when the petitioner can establish three elements: (1) that some fact existed which, without his fault or negligence, was not represented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ. [Citations.]’ [Citations.] ‘The writ lies to correct only errors of fact as distinguished from errors of law.’” (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 544-545 [Fourth Dist., Div. Two], quoting *People v. Sharp* (1958) 157 Cal.App.2d 205, 207.)

In this case, there is clearly no new evidence. The only contention is that defendant lacked the mental capacity to plead guilty. Here, defendant pled guilty to counts 1 and 3, as detailed *ante*, on August 13, 2009. Almost three years later, on June 15, 2012, defendant filed a petition for writ of error *coram nobis* alleging lack of competency to enter into the plea. Not only is there no new evidence, there is nothing in

either of defendant's personal briefs as to why it took almost three years to challenge his competency. The trial court, in denying defendant's petition, gave these reasons: "Based on the petition and the court's record, the court finds that defendant has failed to show due diligence in seeking relief. (*People v. Kim* (2009) 45 Cal.4th 1078, 1096-97; *People v. Shipman* (1965) 62 Cal.2d 226, 230.) Defendant does not allege that he only recently discovered either that his guilty plea was involuntary or that he was incompetent at the time he entered his guilty plea. (See *People v. Brady* (1973) 30 Cal.App.3d 81, 86.) Neither does he explain why he delayed for almost three years in seeking relief." We agree, and we hold that the trial court did not abuse its discretion in denying defendant's petition for writ of error *coram nobis*.

Nonetheless, even if we were to look at defendant's competency issue, we note that the transcript of the hearing shows that defendant asked thoughtful questions regarding his *Cruz* waiver, had meaningful discussions with the court regarding his request for a *Cruz* waiver, and reiterated on numerous occasions that he wanted to go forward with his guilty plea and sentencing hearing. In fact, the court allowed defendant to speak on the *Cruz* waiver request. Defendant stated: "The reason I have asked for a *Cruz* waiver is not only for the fact that the death of my mother. Even if it's not a physical presence issue, it's a respect issue for my family. And also, the record would indicate that I have previously—I do have a long record, but I have been through a drug program sober living house. And I did graduate parole. [¶] And most importantly, I have established my own business, and I kind of need to, you know, clear that up if I am going to be absent for three and a half years. And if there is any possibility that I could

get two, three weeks. And you know, like I said, I am off parole and there are things to clear up.” There is nothing in the transcript to indicate that defendant was not competent at the time he pled guilty. Moreover, other than defendant’s own statements indicating incompetency, defendant has produced no evidence to document any alleged incompetence at the time of his guilty plea. We find no merit to defendant’s argument.

Defendant also seems to be arguing that the petition should have been granted because there was insufficient evidence to support a guilty plea as to count 3. In his first personal brief, defendant states that “the § 422 offense [count 3—criminal threats] is specious and reconstruction of the offense should be juxtaposed to validate the mental state and ineffective assistance contentions.” Again, this is an appeal from the denial of his petition for writ of error *coram nobis*—not from the judgment.

As provided *ante*, defendant has failed to meet the requirements of the writ. However, even if we were to address the sufficiency of the evidence, we first note that defendant failed to obtain a certificate of probable cause to address the merits of his guilty plea. Moreover, during the hearing wherein defendant pled guilty, defendant admitted that he “willfully and unlawfully with the specific intent that [his] statement be taken as a threat, threaten[ed] Timothy T., in violation of Penal Code Section 422.” Defendant cannot—three years after pleading guilty—allege that there is insufficient evidence to support his guilty plea.

Next, we address defendant’s IAC claim. Again, we note that this is an appeal from the denial of defendant’s petition for writ of error *coram nobis*, which was filed

almost three years after defendant pled guilty. As previously noted, defendant has failed to meet the requirements to succeed on his petition.

Notwithstanding, even if we were to consider defendant's IAC claim, we find it without merit. In order to establish a claim of IAC, defendant must demonstrate, "(1) counsel's performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation prejudiced the defendant, i.e., there is a 'reasonable probability' that, but for counsel's failings, defendant would have obtained a more favorable result. [Citations.] A 'reasonable probability' is one that is enough to undermine confidence in the outcome. [Citations.]" (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541, citing, among other cases, *Strickland v. Washington* (1984) 466 U.S. 668; accord, *People v. Boyette* (2002) 29 Cal.4th 381, 430.) Hence, an IAC claim has two components: deficient performance and prejudice. (*Strickland v. Washington*, at pp. 687-688, 693-694; *People v. Williams* (1997) 16 Cal.4th 153, 214-215; *People v. Davis* (1995) 10 Cal.4th 463, 503; *People v. Ledesma* (1987) 43 Cal.3d 171, 217.) If defendant fails to establish either component, his claim fails.

When a claim of ineffective assistance is made and the record does not show the reason for counsel's challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation. (*People v. Pope* (1979) 23 Cal.3d 412, 426.)

In this case, defendant appears to be arguing that counsel rendered IAC because she failed to conduct an investigation to prove defendant's innocence as to count 3 (making criminal threats). The evidence, however, does not support defendant's claim.

At the hearing on August 13, 2009, prior to pleading guilty, defendant acknowledged that he had gone over the terms of the plea agreement and the rights he was giving up with his attorney, and that his attorney had answered all the questions he had regarding his plea. Defense counsel also agreed that defendant and counsel had discussed the plea agreement and defendant had understood what he was pleading guilty to and what he was giving up. The court also asked defendant if he wanted to ask him any questions concerning his legal and constitutional rights. Defendant responded "no." Moreover, the court asked if there was anything else defendant wanted to speak with his counsel about; again, the answer was "no." Thereafter, defendant admitted that he "willfully and unlawfully with the specific intent that [his] statement be taken as a threat, threaten[ed] Timothy T., in violation of Penal Code Section 422." Not once in the entire transcript did defendant show hesitation in pleading guilty or question his counsel's representation. Then, almost three years after the plea, defendant decides to argue that his counsel rendered IAC—with nothing but his own self-serving statement that more investigation would have yielded a different result. We disagree. There is nothing in either of defendant's supplemental briefs to support his claim.

Based on the above, we find that defense counsel did not render assistance below an objective standard of reasonableness under prevailing professional norms.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.