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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.

RYAN DEWAYNE CASTILLO,

Defendant and Appellant.

E056829

(Super.Ct.No. FVI1101653)

OPINION

APPEAL from the Superior Court of San Bernardino County. John B. Gibson,  
Judge. Affirmed.

Marianne Harguindeguy Cox, 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, Lilia E. Garcia,  
Elizabeth M. Carino, and Parag Agrawal, Deputy Attorneys General, for Plaintiff and  
Respondent.

Charged with second degree robbery (Pen. Code, § 211),<sup>1</sup> assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)), assault with a firearm (§ 245, subd. (a)(2), and street terrorism (§ 186.22, subd. (a)), plus gun and gang enhancements (§§ 12022.5, subd. (a); 186.22, subd. (b)(1)(C)); defendant and appellant Ryan Dewayne Castillo pleaded guilty to robbery and the “force likely” assault, also admitting a gun enhancement and a gang enhancement. His plea was in return for an agreed sentence of 10 years computed as follows: the upper term of five years for robbery, four years for the gun enhancement, and a one-year term (one-third the midterm) for the assault conviction. The 10-year gang enhancement (§ 186.22, subd. (b)(1)(C)) was imposed but stayed.

Defendant contends that the trial court erroneously denied his *Marsden*<sup>2</sup> motion prior to sentencing, and that he was unlawfully sentenced both for the robbery and the assault. (See § 654.) We disagree, and affirm the judgment.

### STATEMENT OF FACTS<sup>3</sup>

As a result of defendant’s guilty plea and the nature of the issues raised, the briefest factual summary will suffice. Apparently offended by the color of his shorts, which they perceived as denoting allegiance to a rival gang, defendant and two companions accosted the victim as he walked alone, carrying only a burrito. The victim

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

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

<sup>3</sup> The facts are taken from the preliminary hearing, at which the victim was the primary witness. At the time of the plea, it was stipulated that the court could rely on the preliminary hearing evidence as constituting a factual basis for the plea.

identified defendant as one of the accosters. Over his denials, the youths insisted that he was a rival “gang bang[er].” The youths, led by defendant, forced the victim to remove his shorts, telling him that otherwise “you’re going to lose your life.” They then began going through the pockets, removing his wallet, and then set fire to the shorts with a cigarette lighter.

The victim was then felled by a blow to the temple and curled up to protect himself as the three assailants struck him with fists. The victim identified defendant as the person who pointed a gun at him and told him to “get up on out of here.”

Defendant entered his plea on May 14, 2012. However, when he returned for formal sentencing on June 14, his attorney informed the court that “he has a problem with me . . . . He doesn’t believe that I did the things necessary for him, so I don’t know how I can evaluate what I did in terms of a motion to withdraw a plea without it being a conflict.” The matter was then referred to another judge for a hearing on defendant’s dissatisfaction with counsel.

At that hearing, the court began by saying to defendant “I understand that you would like to have Mr. Powell removed as your attorney?” Defendant’s response was “Um, your Honor, I want - - I want Mr. Powell as my attorney, but we have certain issues with each other . . . . I want Mr. Powell [as] my attorney, but me and him have issues.”

Prompted to elaborate, defendant complained first that counsel was difficult to get in touch with, and that he had earlier that day rebuffed defendant’s “plans on what to do today.” Assuring the court that he was not trying to “bully” counsel, he confirmed that

“I respect Mr. Powell. He has a lot of - - a lot of potential . . . and I would love him to be my attorney . . . some things we disagree on, but I’m willing to work it out.”

Defendant’s attorney then told the court that defendant wanted to withdraw his plea, and that counsel had tried to explain to him that “there’s not a whole lot we can do.” He described the plea negotiations that resulted in getting “it down to a number that [defendant] agreed on, after much discussion. There were tears shed. Mom was there, allowed to talk to him for quite a while . . . I told him . . . that I believed, in my honest opinion, that his best course of action was to take a plea. I couldn’t guarantee him a win. He took that as he didn’t have faith in my ability if I couldn’t guarantee him a win, which I just can’t do.”

Defendant then told the trial court that counsel seemed to think that he was guilty, “which I’m not.” He said that at the time of the plea he was “distraught” (consistent with counsel’s statement), and that subsequently, he had had the opportunity to “really sit down and think about my case, and I come to the conclusion that nobody in this room . . . would plead to something that are not something - - something that they didn’t do.” After this somewhat opaque statement, the trial court denied the motion.

## DISCUSSION

### A.

In considering a defendant’s request for new counsel, the trial court must permit the defendant to explain the reasons for his dissatisfaction and to relate specific instances of inadequate performance. A defendant is entitled to relief if the record shows that the

attorney is not providing adequate representation or that the defendant and counsel have become embroiled in an irreconcilable conflict. (*People v. Taylor* (2010) 48 Cal.4th 574, 599.) The defendant bears the burden of making a substantial showing that failure to order substitution would result in constitutionally inadequate representation. (*People v. Hines* (1997) 15 Cal.4th 997, 1025-1026. Our review is for abuse of discretion. (*People v. Streeter* (2012) 54 Cal.4th 205, 230.)

First, as respondent argues, it is questionable whether there was a true *Marsden* request at all. Defendant himself did not demand new counsel; the concern regarding his possible wishes was raised by his attorney. When questioned, defendant expressed nothing but respect for trial counsel, and although he discussed his “issues,” the gist of his statements to the court was that he did not like the advice he had been given or his current situation.

Even if we consider the matter as a true *Marsden* case, there was no abuse of discretion. The trial court properly carried out its obligation to ask defendant the reasons for any dissatisfaction with counsel. The tactical disagreements reflected by defendant did not constitute or demonstrate an irreconcilable conflict. (See *People v. Alfaro* (2007) 41 Cal.4th 1277, 1320.) Defendant expressly stated that he was “willing to work it out.” This, along with his repeated expressions of respect, makes his current claim of irreconcilable differences simply untenable.

Nor did defendant demonstrate that counsel's advice that he take the plea was not, in fact, very good advice indeed, or that the case was destined to be a "winner" if pursued to trial. Hence, defendant's right to adequate representation was not adversely affected by the refusal to appoint a new attorney.<sup>4</sup>

B.<sup>5</sup>

Defendant also argues that the assault and robbery were part of the same transaction and therefore could not be separately punished under section 654.<sup>6</sup> The aim of the statute is to ensure punishment commensurate with culpability. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 705-706.)

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<sup>4</sup> Defendant also argues that trial counsel was either "unwilling or unable" to file a motion to withdraw his plea and asserts that "[t]he denial of appellant's *Marsden* motion and the resulting denial of his motion to withdraw his plea denied appellant his Sixth Amendment right to counsel to present a motion to withdraw the plea." He takes the apparent position that trial counsel was reluctant to argue his own incompetence as a basis for allowing defendant to withdraw his plea. To the contrary, trial counsel's statements indicated that he simply did not see any legal basis for such a request. Defendant's own statements did not raise any complaints about defense maneuvers or avenues that should have been undertaken or pursued; he was simply unhappy with his plea. As presented in the brief, defendant seems to be taking the position that trial counsel was incompetent for advising him to plead guilty, should have raised such an issue in a motion for new trial, and therefore the *Marsden* motion should have been granted. To the extent that this reasoning is not circular or backwards, we reiterate that there is nothing in the record to support even a suspicion that the advice to accept the plea was not good advice.

<sup>5</sup> The People accept defendant's position that, because he was granted a certificate of probable cause, he may challenge the legality of the negotiated sentence. (See *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

<sup>6</sup> The statute reads in pertinent part "(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

However, section 654 bars multiple punishments for separate acts only if the criminal act or acts constituted an indivisible transaction and were directed towards a single criminal objective. (*People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1288, citing *People v. Britt* (2004) 32 Cal.4th 944, 952.) If a defendant commits one offense merely as the means towards the objective of committing another, section 654 prohibits separate punishments for the two offenses. (*Id.* at p. 953.) On the other hand, if the defendant harbors multiple criminal objectives, he may be separately punished even if the violations shared common acts or were part of an otherwise single course of conduct. (*People v. Galvez* (2011) 195 Cal.App.4th 1253, 1262-1263 (*Galvez*)). The trial court's findings on the defendant's intent will be upheld if supported by substantial evidence. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 626-627.)

*Galvez* is instructive. In that case, a witness to an assault called 911. Realizing this, the assailants turned to the witness and attacked him. The witness/victim dropped the cell phone and fell to the ground, but the defendant assailants continued to stamp on him and kick him. Galvez was separately punished for robbery (§ 211), attempting to dissuade a witness (§ 136.1, subd. (b)(1)), and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)). (*Galvez, supra*, 195 Cal.App.4th at pp. 1256-1258.) The court held that section 654 applied to bar separate punishment for the robbery and the witness dissuasion, because the robbery of the cell phone was intended to prevent

the witness from contacting police. However, the court held that the subsequent stamping and kicking *could* be punished separately from the robbery, because the witness had already been separated from his cell phone and was helpless on the ground. Thus, the subsequent assault was unnecessary to the accomplishment of the other crimes and this gratuitous violence could be separately punished. (*Galvez, supra*, 195 Cal.App.4th at p. 1263.)

In this case, the trial court properly found that defendant harbored separate multiple objectives. The robbery was committed when the victim was forced to remove his shorts and defendant and his cohorts took his property. Even the first blow was unnecessary to the robbery, as the victim was not only outnumbered but undressed and unlikely to offer further resistance. The subsequent attack committed while the victim was helpless on the ground was just as gratuitous as that in *Galvez*.

Although defendant insists that the continued assault was intended only to encourage the victim to leave peaceably, this is merely one interpretation, and not one ineluctably compelled by the evidence. Instead, substantial evidence supports the conclusion that the continued attack was committed simply to punish the victim for entering the perpetrators' presence wearing "red flag" clothing—either that, or out of simple bloody-mindedness.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

McKINSTER  
J.

MILLER  
J.