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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE RAMIREZ SAAVEDRA,

Defendant and Appellant.

F062794

(Super. Ct. Nos. CF02600367, F11900941)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Wayne R. Ellison, Judge.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Poochigian, J., and Franson, J.

On April 5, 2011,¹ pursuant to a plea agreement covering Fresno County Superior Court case Nos. CF02600367 (first case) and F11900941 (second case), appellant, Jorge Ramirez Saavedra, pled no contest to two counts of attempted murder (Pen. Code, §§ 187, subd. (a), 664)² in the first case and a single count of battery upon a custodial officer (§ 243.1) in the second case, and admitted the following enhancement allegations in the first case: in committing each offense he personally used a deadly weapon (§ 12022, subd. (b)(1)), in committing the count 1 offense he inflicted great bodily injury under circumstances involving domestic violence, within the meaning of section 12022.7, subdivision (e), and in committing the count 2 offense, he inflicted great bodily injury within the meaning of section 12022.7, subdivision (a).³ Also pursuant to the plea agreement, the court dismissed charges in the first case that appellant committed infliction of corporal injury to his spouse, cohabitant or parent of his child (§ 273.5, subd. (a); count 3), assault with a deadly weapon (§ 245, subd. (a)(1); count 4) and aggravated mayhem (§ 205; count 5).

On June 6, the court imposed a prison sentence of 18 years 8 months, consisting of the following, in the first case: the nine-year upper term on count 1; on count 2, two years four months, representing one-third of the middle term; five years on the section 12022.7(e) enhancement, one year for the count 1 weapon-use enhancement; one year for the section 12022.7(a) enhancement, representing one-third of the middle term; and four months on the count 2 weapon-use enhancement, representing one-third of the middle term. In the second case, the court imposed a concurrent midterm sentence of two years.

¹ Except as otherwise indicated, all references to dates of events are to dates in 2011.

² All statutory references are to the Penal Code.

³ We refer to subdivisions (e) and (a) of section 12022.7 as, respectively, sections 12022.7(e) and 12022.7(a).

On June 29, appellant filed a timely notice of appeal and the court issued a certificate of probable cause (§ 1237.5).

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant, apparently in response to this court's invitation to submit additional briefing, has submitted a brief in which he argues, as best we can determine, that his plea was the product of ineffective assistance of counsel. Appellant also asks that we augment the record to include transcripts of two hearings. We affirm, and deny the motion to augment the record.

FACTUAL AND PROCEDURAL BACKGROUND

Facts⁴

In the first case, on March 24, 2002, appellant was in a car with another male, his girlfriend (V1) and another woman (V2), riding home from a bar, when he attacked V2 with a broken beer bottle, cutting her ear, neck and chin. V2, who was driving, stopped the car and the car's occupants got out, at which point appellant "cut and struck V1 several times in the face and body," "bit off the tip of her nose," and "slammed her head on the ground, saying, 'I'm going to kill you....'" Appellant "fled to New Jersey, and lived on the East Coast, until his arrest in November 2009."

In the second case, on February 17, appellant, upon returning to jail following a court hearing, "did not comply with a deputy sheriff's commands and became combative." The deputy "attempted to take [appellant] to the ground, and heard a pop from his right shoulder."

⁴ Our factual summary is taken from the report of the probation officer.

Procedural Background

On April 5, appellant executed change of plea forms in both the first and second cases, in each of which he stated he had “had enough time to discuss [his] case and all possible defenses with [his] attorney,” and he was “entering [his] plea freely and voluntarily, without fear” On each form, a court interpreter averred that she had translated the form to appellant in the Spanish language and appellant “indicated that he understood the contents of the form” Later on April 5, appellant appeared in court with his attorney, David Mugridge, and, in response to questioning by the court, confirmed, *inter alia*, the following: He had executed two change of plea forms; in executing the forms he was “assisted by the court certified Spanish language interpreter”; he understood “the ... plea [agreement] as set forth in those forms”; and he did not need more time to speak with his attorney.⁵ Thereafter, appellant entered his plea.

On May 3, appellant appeared for sentencing. At the outset of the proceeding, however, Mugridge informed the court that appellant wished to withdraw his plea. When the court asked Mugridge if there were any legal grounds for a motion to withdraw the plea, Mugridge indicated that appellant was asserting that Mugridge’s representation of appellant had been constitutionally inadequate. After some discussion, Mugridge “request[ed], on [appellant’s] behalf, the opportunity to do a Marsden [hearing].”⁶ The court granted that request.

⁵ Appellant was assisted at this hearing, and at all court proceedings we discuss in this opinion, by a court-certified Spanish language interpreter.

⁶ In *People v. Marsden* (1970) 2 Cal.3d 118, the California Supreme Court held that when a criminal defendant requests a new appointed attorney, a trial court must conduct a proceeding in which it gives the defendant an opportunity to explain the basis for the contention that counsel is not providing adequate representation. (*Id.* at pp. 123-125.) A motion for the appointment of substitute counsel on the ground that the current appointed counsel is providing inadequate representation, and the hearing on that motion are commonly called, respectively, a *Marsden* motion and a *Marsden* hearing.

At the outset of the *Marsden* hearing, which began shortly thereafter, the court asked appellant why he wanted to withdraw his plea and what it was Mugridge “did wrong to get [appellant] to enter this plea.” Appellant responded that he cannot read English and Mugridge had not “helped [appellant] enough” to understand “all the paperwork”; Mugridge “didn’t help [appellant] in anything”; and “there is a lot of details in [appellant’s] case that could have been resolved, but nobody did anything to try and resolve them. Never.” Asked to respond, Mugridge told the court that he is fluent in Spanish, and “all the legal documents,” including the police report “have been read to [appellant] and/or explained to him in Spanish.”

The court asked Mugridge if he knew of any “possible grounds” that would constitute a “colorable claim” that appellant was entitled to withdraw his plea. Mugridge told the court “the only colorable claim” would be that “the plea happened in such a hurry,” and that because of the language barrier, appellant did not have enough time to “really meditate on the significance of what he was doing” Mugridge also told the court, “But I think that what he wants to argue is that I pushed him into it at the time that we were here, although I don’t personally feel that way. We discussed it.” The court noted that appellant had not made that claim.

Thereafter, appellant also complained that in “about eight, ten months,” Mugridge had only visited appellant at the jail between three and five times. In response, Mugridge told the court he had “personally visited [appellant in the jail] no less than 12 times, maybe more than that,” and that a defense investigator and paralegal had also visited appellant in jail.

The court denied the *Marsden* motion, stating that it did not believe appellant’s assertions regarding the number of visits and counsel’s purported failure to “let [appellant] know what the case is about.” The court also found “that there is no demonstration of a colorable claim of ineffective assistance that would support this court

ordering the appointment of some other attorney to consider grounds on that basis for a motion [to withdraw the plea].”

When court reconvened with the prosecutor present, the court indicated that it had found that “there [are] no grounds, at least based upon ineffective assistance of counsel” to appoint substitute counsel or grant a motion to withdraw the plea, but invited Mugridge to “articulate some other grounds which [counsel] might consider to be a basis for a motion [to withdraw the plea] which would justify a continuance.” Mugridge responded that appellant had indicated to him that the entry of the plea was “rushed” and that as a result, he (appellant) did not have “the opportunity to truly understand what he was doing” Mugridge asked the court to continue the matter for two weeks to present a motion to withdraw the plea. The court set a hearing date of May 19. On that date, the matter was continued to June 6.

On June 6, at the outset of the hearing, Mugridge informed the court that appellant had stated that he wished to proceed with sentencing and had asked Mugridge not to present a motion to withdraw the plea. The court asked appellant if that was correct. Appellant responded, “I have not spoken to Mr. Mugridge.” There followed some off-the-record discussion, including discussion between appellant and Mugridge, after which Mugridge told the court the following: He had visited appellant at the jail at least twice since May 19, and appellant had stated he “simply wished to proceed with sentencing” and did not wish to withdraw his plea. However, appellant indicated “he was under the misapprehension” that Mugridge was going to present a motion to withdraw the plea, and appellant wanted a continuance so that Mugridge would have “the time to ... file something.”

The court denied the request for a continuance, stating that appellant was “in fact, manipulating the parties in this matter for further delay.” The court further stated it would “have [appellant] sworn and he can state on the record whatever it is that he

believes are grounds in his view to withdraw the plea,” and “then [Mugridge could] argue that issue.” Shortly thereafter, appellant was sworn as a witness, and, under questioning by Mugridge, told the court the following. His “defense ... has not been enough.” Mugridge told appellant the prosecution was “offering ... two years,” but after looking through the “paperwork,” Mugridge stated the offer was 12 years. “[T]hat means he didn’t know anything about [appellant’s] case.” Mugridge “made” appellant sign the change of plea forms. Mugridge spoke with appellant’s wife on April 4, and when appellant learned of that, he “immediately felt pressured” Appellant also felt “pressured” because Mugridge told him he “had no salvation.” Appellant “was not understanding exactly what was going on” at the time he signed the change of plea forms “because [his] mind was confused.” He was “completely lost” when Mugridge was speaking to him. Appellant was also “under the influence of a drug,” viz., a “pill” he had been given at the jail, which had the following effect: “When [Mugridge] started to talk to me and pressure me then my mind became confused and my mind was gone.” Appellant recalled the court asking him whether he was affected by any medication he was taking. Appellant told the court “the medication was not affecting [him]” because he was “very frightened.”

Shortly thereafter, the court took judicial notice of the transcript of the April 5 proceeding, and asked Mugridge if he wanted to present argument. At that point, there was an off-the-record discussion between appellant and Mugridge, after which Mugridge told the court that appellant no longer wanted Mugridge “to represent him period as of now” The court then asked appellant if he had complaints about Mugridge other than those he expressed at the *Marsden* hearing, and the following exchange ensued:

“[Appellant]: Yes. I don’t want him to defend me because at no moment [has] he defended me. At no time has he defended me.

“THE COURT: That’s based on all the things you told me before?”

“[Appellant]: The whole time he’s been worried about other cases. It was like he didn’t care about my case.

“THE COURT: And that’s what you told me before, correct, sir?

“[Appellant]: I don’t remember.”

The court then denied appellant’s request that Mugridge be relieved as appellant’s counsel. Mugridge then presented argument that appellant’s plea was not voluntary due to “the combination of the stress of the moment and the drug” The court stated it found appellant’s testimony not credible, denied appellant’s request to withdraw the plea, and proceeded to impose sentence.

DISCUSSION

As indicated above, appellant’s argument on appeal, it appears, is that his decision to enter into the plea agreements and not insist on a trial was the result of attorney Mugridge’s constitutionally inadequate representation.

“It is well settled that where ineffective assistance of counsel results in the defendant’s decision to plead guilty, the defendant has suffered a constitutional violation giving rise to a claim for relief from the guilty plea.” (*In re Alvernaz* (1992) 2 Cal.4th 924, 934.) A claim of ineffective assistance of counsel requires the defendant to show both that trial counsel’s performance was deficient and that the defendant suffered prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 693 [104 S.Ct. 2052].) In the context of a plea of guilty or no contest, a defendant must demonstrate: (1) his or her counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms; and (2) he or she suffered prejudice from counsel’s deficient performance in that “there is a reasonable probability that, but for counsel’s errors, he [or she] would not have pleaded guilty and would have insisted on going to trial.” (*Hill v. Lockhart* (1985) 474 U.S. 52, 59 [106 S.Ct. 366].)

Appellant's argument on appeal consists of conclusory allegations that counsel was not adequately prepared and did not represent appellant competently, and claims that counsel misinformed appellant about aspects of the plea agreement as proposed, misrepresented various matters to the court, failed to adequately explain matters to appellant, did not review discovery and failed to make motions. Most, if not all of these claims appear to be based on matters outside the record, and are thus not reviewable on appeal. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1183 ["review on a direct appeal is limited to the appellate record"].) In any event, the record provides no support for the claim that counsel's performance was not objectively reasonable or that appellant was prejudiced. Therefore, appellant's claim of ineffective assistance of counsel fails.

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

Motion to Augment Record

Appellant requests transcripts of the oral proceedings conducted on February 17 and May 19. We treat this request as a motion to augment the record to include reporter's transcripts of those proceedings (Cal. Rules of Court, rule 8.155).

In making such a motion, "[all] that is required of [the moving party] is that he signify with some certainty how materials not included in the normal transcript may be useful to him on appeal." (*People v. Gaston* (1978) 20 Cal.3d 476, 482.) "The showing of 'some certainty' must be made as to the *manner* in which the materials may be useful, not as to the contents of the materials themselves." (*Ibid.*)

Here, appellant makes no showing as to how the materials he requests may be useful in the instant appeal. Therefore, we will deny appellant's motion.

DISPOSITION

The judgment is affirmed. The motion to augment the record is denied.