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

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD JOSEPH MENDOZA,

Defendant and Appellant.

F063585

(Super. Ct. No. VCF241607G)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Levy, Acting P.J., Gomes, J. and Detjen, J.

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Appellant, Richard Joseph Mendoza, challenges the trial court's denial of his motion to withdraw his guilty plea. According to appellant, he was under duress and not thinking rationally when he decided to change his plea and accept the prosecution's offer. Appellant alleges he demonstrated, by clear and convincing evidence, that there was good cause for permitting him to withdraw his plea.

The trial court did not abuse its discretion in denying appellant's motion. Accordingly, the judgment will be affirmed.

BACKGROUND

Appellant aided and abetted several gang members in shooting at an apartment complex where rival gang members were known to congregate. Two people were shot and injured.

Based on this event, appellant was charged with: conspiracy to commit a crime (Pen. Code,¹ § 182, subd. (a)(1)); two counts of attempted murder (§§ 664, 187, subd. (a)); and shooting at an inhabited dwelling (§ 246). The complaint further alleged that appellant committed street terrorism (§ 186.22, subd. (b)(4), (5)); that a principal personally and intentionally discharged a firearm causing great bodily injury (§ 12022.53, subds. (c), (d), (e)(1)); and that appellant had been convicted of a prior serious felony (§§ 667, subd. (a)(1), 1170.12).

Although appellant originally entered a not guilty plea to all counts, he later changed his plea to no contest to one count of attempted murder. Appellant also admitted the gang enhancement, the gun enhancement, and the prior felony. In exchange for this plea, the court agreed to sentence appellant to 25 years as follows: the mitigated term of 5

¹ All further statutory references are to the Penal Code.

years doubled to 10 for the attempted murder; 10 years for the gun enhancement; and 5 years for the prior felony.

The court found there was a factual basis for the pleas and that appellant had made a knowing, intelligent, and voluntary waiver of rights and admission of the charges.

Thereafter, appellant moved to withdraw his plea. Appellant based his motion on claims that: he had not taken his medication for high blood pressure and diabetes as he should have at 8:00 a.m. before entering his plea approximately two hours later and, as a result, his blood pressure was low, he was shaking and was not thinking rationally; he felt pressured by his attorney and the district attorney to accept the plea deal; he felt intimidated in the courtroom by the district attorney and the police officers present; and he was confused about the deal.

In response, appellant's counsel, Mr. Hiddleston, testified that he told appellant the chances a jury would convict him was about 80 percent and that if he lost, the court would sentence him to multiple life sentences. Hiddleston acknowledged that both he and appellant felt "intimidated" by the possible sentence. Hiddleston further stated that he explained the deal to appellant and that appellant appeared normal. Hiddleston did not notice appellant shaking and appellant appeared to be cognizant.

The trial court denied the motion. The court stated it did not find good cause to allow appellant to withdraw his plea. The court recalled taking appellant's plea and that, at that time, there was no indication that appellant's ability to clearly understand what was happening or understand the consequences of what he was doing was impaired. The court further noted that there was no mention whatsoever that appellant was not thinking rationally or that he did not have his blood pressure medication. The court additionally observed that appellant frequently spoke with Hiddleston during the change of plea proceeding. Based on these circumstances, the court concluded that this was nothing more than a case of some "buyer's remorse." The court then imposed the indicated sentence.

DISCUSSION

To be valid, the entry of a guilty plea must be intelligent and voluntary under the totality of the circumstances. (*People v. Howard* (1992) 1 Cal.4th 1132, 1177.) In other words, the plea must represent a voluntary and intelligent choice among the alternative courses of action open to the defendant. (*Ibid.*) Specifically, waivers of constitutional rights must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon that right. Such waivers must also be voluntary in the sense that they are the product of a free and deliberate choice rather than intimidation, coercion, or deception. (*People v. Collins* (2001) 26 Cal.4th 297, 305.)

A defendant may seek to withdraw a guilty plea before judgment has been entered upon a showing of good cause. (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.) To establish good cause, the defendant must demonstrate that he was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. Such other factors include inadvertence, fraud or duress. (*Ibid.*) The burden is on the defendant to present clear and convincing evidence that the ends of justice would be served by permitting a change of plea to not guilty. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.)

The grant or denial of a motion to withdraw a plea is purely within the discretion of the trial court. (*People v. Sandoval, supra*, 140 Cal.App.4th at p. 123.) On appeal, the trial court's decision will be upheld unless there is a clear showing of abuse of discretion, i.e., the court exercised its discretion in an arbitrary, capricious or patently absurd manner resulting in a manifest miscarriage of justice. (*People v. Shaw, supra*, 64 Cal.App.4th at p. 496.)

In entering his no contest plea, appellant waived all of his appellate rights, except as to sentencing. Respondent argues that this waiver precludes this appeal. However, to be enforceable, a defendant's waiver of the right to appeal must be knowing, intelligent and voluntary. (*People v. Panizzon* (1996) 13 Cal.4th 68, 80.) Because appellant is

challenging the entire plea, including the waiver of appellate rights, on the ground that it was neither voluntary nor intelligent, we will consider this appeal on the merits.

Nevertheless, appellant has not shown either that the trial court abused its discretion in denying his motion or that his plea was not voluntary and intelligent.

Appellant contends that he showed good cause to withdraw his plea in that he felt pressured to take the plea deal, he was not thinking rationally due to not having taken his medication and he did not understand the terms of the plea. However, the record does not support appellant's claims.

As to feeling pressured and intimidated, appellant was facing a life term, which would be intimidating to anyone. Further, Hiddleston testified that he did not pressure appellant but, rather, informed appellant of the likeliness of conviction and the possible sentence.

Hiddleston also testified that appellant appeared normal and cognizant and was not shaking. The court's recollection was the same. Moreover, when asked by the court whether he was feeling ill or presently taking medication that was affecting his ability to think clearly, appellant replied no.

Finally, the record reflects that the plea was carefully explained to appellant. Appellant claims that he did not know that the plea included an admission to the use of a firearm. However, that was not part of the plea. Rather, appellant pled no contest to being an aider and abettor, not to the personal discharge of a firearm.

Under these circumstances the trial court did not abuse its discretion in denying appellant's motion to withdraw his no contest plea. Appellant did not establish, by clear and convincing evidence, that the exercise of his free judgment was overcome.

Similarly, there is no indication in the record that appellant's plea was not voluntarily and intelligently made. Appellant again relies on the claims that he felt pressured, was not thinking clearly, and was confused about certain aspects of the deal. However, as discussed above, these claims are not supported by the record. When

appellant's plea was taken, the court carefully explained the terms of the plea and the rights that appellant would be giving up. Under the totality of circumstances, we conclude that appellant's plea was voluntary and intelligent.

DISPOSITION

The judgment is affirmed.