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

THE PEOPLE,

Plaintiff and Respondent,

v.

ROXANNE ATKA ARI,

Defendant and Appellant.

F070448

(Super. Ct. No. MMH00477)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Ernest J. LiCalsi, Judge.

Peggy A. Headley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Kari Ricci Mueller, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Franson, Acting P.J., Peña, J., and Smith, J.

INTRODUCTION

Appellant Roxanne Atka Ari was charged with unlawfully possessing an instrument or weapon while confined in a penal institution. The trial court suspended criminal proceedings pursuant to Penal Code¹ section 1368, and, at the competency hearing, Ari stated she wished to discharge her counsel. The trial court did not address her request. Ari contends the failure to hold a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 is prejudicial error requiring reversal. We agree.

FACTS AND PROCEDURAL HISTORY

On May 1, 2014, Ari was charged with violating section 4502, subdivision (a), possession of a weapon while incarcerated in a penal institution, specifically an AC/DC adaptor in a sock. It also was alleged that Ari had suffered a prior strike conviction for murder in 1991. On July 10, 2014, Ari pled not guilty and denied the allegation.

On July 21, 2014, at the preliminary hearing, defense counsel expressed a doubt as to Ari's competency to stand trial and claimed she could not assist defense counsel. The trial court suspended criminal proceedings pursuant to section 1368 and ordered Ari evaluated by two doctors.

At the competency hearing on August 28, 2014, Ari sought to discharge her attorney. She stated:

“Your Honor, I want to discharge that attorney. He is not speaking for me. I told him when he—when he set doctors. I do not talk to doctors so I didn't talk to no doctors. I want a preliminary hearing and a jury. I haven't committed no crime. If I had committed a crime, I wouldn't go for insanity. I want to discharge him.”

The trial court's only response was to direct Ari to “Stop.” After the trial court instructed Ari to stop, both defense counsel and the People submitted on the matter of competency. The trial court found Ari incompetent to stand trial.

¹References to code sections are to the Penal Code unless otherwise specified.

At a hearing on September 25, 2014, the trial court found that Ari “lacks capacity to make decisions regarding anti-psychotic medication.” The trial court ordered Ari committed to Patton State Hospital and authorized the hospital to “administer involuntarily anti-psychotic medication.” The trial court also found that the total term Ari could serve there was “eight years.”

Ari filed a notice of appeal on October 30, 2014. Appellate counsel was appointed for Ari on January 5, 2015. On June 4, 2015, this court received a request from Ari asking that her appeal be expedited in part because of the adverse effect psychotropic medications were having on her. This court denied the request to expedite the appeal by order dated June 12, 2015.

DISCUSSION

We dispense summarily with the issue of whether Ari has appealed from an appealable order. An order finding a defendant incompetent to stand trial and committing the defendant to a state hospital until sanity is restored is appealable as a final judgment. (*People v. Christiana* (2010) 190 Cal.App.4th 1040, 1045-1046.) The remaining sole issue raised in Ari’s opening brief is that the trial court erred prejudicially in failing to hold a *Marsden* hearing.

The record reflects that when Ari raised a concern about defense counsel and stated she wanted to discharge him, instead of conducting a *Marsden* hearing, the trial court ordered her to stop talking. There was no attempt to conduct any hearing at which Ari could fully express her concerns about defense counsel and her reasons for wanting to discharge him.

A trial court must conduct a *Marsden* hearing when there is “some clear indication by the defendant, either personally or through counsel, that the defendant wants a substitute attorney.” (*People v. Sanchez* (2011) 53 Cal.4th 80, 84.) This same principle holds true as to a defendant in a competency proceeding who expresses a desire for substitute counsel. (*People v. Solorzano* (2005) 126 Cal.App.4th 1063, 1069-1070.) We

can think of no clearer indication of a defendant wanting substitute counsel than a defendant plainly stating, as Ari did here, that she wanted to discharge her counsel.

The People contend, however, that the failure to conduct a *Marsden* hearing in this case was not prejudicial because the record suggests Ari was upset with defense counsel because he had declared a doubt as to her mental competency. Failure to hold a *Marsden* hearing generally is not harmless because a defendant “might have catalogued acts and events beyond the observations of the trial judge” (*People v. Mejia* (2008) 159 Cal.App.4th 1081, 1087.) The test is not whether, on the record, a defendant had a meritorious claim. (*Ibid.*) Had Ari been afforded an opportunity to express her concerns fully about defense counsel, she may have catalogued differences and problems other than those she was able to articulate before the trial court ordered her to stop speaking.

We also note that the People, in part, rely on comments from Dr. Robert Taylor, who was ordered to evaluate Ari for competency, as further basis that Ari’s only complaint was defense counsel’s challenge to her competency. Interestingly, Taylor was unable to complete an evaluation because Ari refused to cooperate, and Taylor did not offer an opinion as to her competency.

The other doctor who was to evaluate Ari, Dr. Michael Zimmerman, noted that Ari was “a gray haired woman in her 70s who steadied herself on a cane”; had told correctional officers she did not want to participate in the interview; and in fact, refused to be interviewed. Zimmerman, however, concluded Ari had a psychotic disorder, was not competent to stand trial, and not competent to make decisions about psychotropic medication.

The full nature and extent of Ari’s reasons for wanting to discharge her defense counsel on August 28, 2014, are not known because she was not afforded a *Marsden* hearing as is required. (*People v. Sanchez, supra*, 53 Cal.4th at p. 84.) What the record reflects is that Ari has now been housed at Patton State Hospital since approximately

September 25, 2014, administered psychotropic medications against her will, and is seeking a reversal of the order that placed her there and a *Marsden* hearing.

When a trial court's failure to hold a *Marsden* hearing is the only error, it is appropriate to reverse and remand for the limited purpose of conducting a *Marsden* hearing. (*People v. Hill* (2013) 219 Cal.App.4th 646, 653-654.)

DISPOSITION

The order finding Ari incompetent to stand trial is reversed. The matter is remanded with directions to the trial court to conduct a *Marsden* hearing, and, depending upon the outcome of that hearing, to exercise judicial discretion to reinstate the order, conduct a new competency hearing after appointment of substitute counsel, or proceed as otherwise allowed by law.