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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GREGORY LAFAYETTE MOULTRIE, Defendant and Appellant.	F076719 (Super. Ct. No. F17903382) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. F. Brian Alvarez, Judge.

Elisa A. Brandes, 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 Franson, Acting P.J., Smith, J. and DeSantos, J.

INTRODUCTION

Appellant Gregory Lafayette Moultrie pled no contest to one count of violating Penal Code[1] section 487, subdivision (c), grand theft, and one count of violating section 266h, subdivision (a), pimping, and admitted a prior strike conviction, in exchange for a stipulated term of seven years four months in prison and dismissal of other counts and enhancements. Moultrie filed a notice of appeal. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On July 6, 2017, Moultrie was charged in an information with human trafficking in violation of section 236.1, subdivision (b); second degree robbery in violation of section 211; pimping in violation of section 266h, subdivision (a); and pandering in violation of section 266i, subdivision (a)(1). It also was alleged that Moultrie had suffered a prior strike conviction and had served two prior prison terms within the meaning of section 667.5, subdivision (b).

Officer Marissa Cisneros-Jackson testified at the preliminary hearing that on June 13, 2017, she was a member of the domestic violence unit investigations division and was assigned to work on a case involving Moultrie and the victim, Hannah. Hannah told the officer that she had met Moultrie a few months earlier and they dated for a couple months. Hannah told Moultrie she was "down on her luck" and "needed assistance obtaining money." Moultrie discussed with Hannah working in "a form of prostitution."

Moultrie would rent out the rooms for her to use while working as a prostitute and then take all the money she received from her clients. Moultrie paid her cell phone bill and gave her money for clothing. Moultrie demanded that she make $300 minimum per

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

day. Moultrie would tell her "where to go to pick up johns." Moultrie asked Hannah to recruit other "girls" to work for him.

Officer Anthony Rodriguez also testified. On June 7, 2017 around 12:15 a.m., Rodriguez was dispatched to a location on West Rialto in Fresno because "one of the residents at a house heard a female screaming outside." When Rodriguez arrived, he encountered Hannah, who was crying, breathing heavily, and said she was scared.

Moultrie had been texting and calling Hannah, so she met up with him. They drove to a liquor store and then Moultrie wanted to go to Lions Park. Moultrie was upset with her and told her "she needed to still do some work for him" or "cash him out." Hannah was feeling afraid and wanted to get away from Moultrie.

They exited the car; Moultrie walked over to her and grabbed her phone. Hannah tried to grab the phone back; they struggled, and Moultrie shoved her to the ground and took the phone. Hannah grabbed Moultrie's shirt to pull herself up; it ripped, and Moultrie hit her. After Moultrie had the phone, he climbed in his vehicle and left.

On August 28, 2017, the trial court heard Moultrie's motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 11, for appointment of new counsel. The motion was denied.

On September 18, 2017, Moultrie signed a felony advisement, waiver of rights, and plea form. He pled no contest to one count of violating section 487, subdivision (c), grand theft, and one count of violating section 266h, subdivision (a), pimping, and admitted a prior strike conviction in exchange for a stipulated term of seven years four months in prison and dismissal of other counts and allegations. When he signed the plea form, Moultrie also initialed the boxes indicating he understood and waived his rights to a trial by jury, to confront witnesses, and to present evidence. Moultrie's attorney signed the verification indicating he had discussed the plea form with Moultrie, and explained to Moultrie his constitutional rights, the consequences of entering a plea, the elements of the offenses, and possible defenses to the charges.

At the September 18, 2017 hearing, the trial court confirmed that Moultrie had initialed and signed the plea form after consultation with his attorney. Moultrie affirmed that he had read and understood the plea form. The trial court explained to Moultrie his constitutional rights and solicited a waiver of those rights. The parties stipulated that the police reports and preliminary hearing transcript provided a factual basis for the plea.

Moultrie entered his plea of no contest pursuant to the plea agreement. The trial court found Moultrie knowingly and intelligently waived his constitutional rights and freely and voluntarily entered into the plea. The People's motion to dismiss the remaining counts and allegations was granted.

At the October 17, 2017 sentencing, the trial court stated it was prepared to impose sentence in accordance with the plea agreement. Moultrie's attorney asked the trial court to dismiss, or strike, the prior strike and impose a lower sentence than agreed upon by the parties. The People argued that the plea agreement called for a stipulated sentence.

Moultrie addressed the trial court and opined that he felt "forced to take this deal." Moultrie claimed his attorney had a conflict because the attorney represented both Moultrie and his brother on criminal matters. Moultrie stated he "took the deal" because he was not going "to play" with his life and understood he was facing about 14 years in prison if he went to trial.

After these remarks from Moultrie, the trial court expressed doubt as to whether Moultrie wanted to move forward with the plea agreement and sentencing. The trial court stated it was calling a recess to allow Moultrie's attorney to confer with his client. The trial court stated that if Moultrie continued with the sentencing, the sentence imposed would be that stipulated to in the plea agreement.

When the parties were back on the record after the recess, the trial court stated that Moultrie "has apparently had a violent breakdown and has been subdued." The trial court continued the sentencing to the following day. At the continued sentencing the following day, Moultrie's attorney asked for a further continuance.

The matter was again on for sentencing on November 1, 2017. Moultrie submitted "on the stipulated plea of seven years and four months." The trial court imposed a term of six years for the section 266h, subdivision (a) offense, pursuant to section 667, subdivision (e)(1). For the section 487, subdivision (c) offense, a term of 16 months was imposed. The total term imposed was seven years four months in accordance with the plea agreement. Various fines and fees were imposed, and credits were awarded.

The abstract of judgment was filed on November 2, 2017.

Moultrie filed a notice of appeal on December 14, 2017 and sought a certificate of probable cause. The trial court denied the request for a certificate of probable cause. A second notice of appeal was filed on December 28, 2017; no certificate of probable cause was sought.

DISCUSSION

On May 14, 2018, appellate counsel sent a letter pursuant to *People v. Fares* (1993) 16 Cal.App.4th 954 requesting the trial court correct the award of presentence credits. On May 22, 2018, the trial court issued a minute order correcting the credits and amending the abstract of judgment.

Appellate counsel filed a *Wende* brief on July 9, 2018, and that same day this court issued its letter to Moultrie inviting him to submit supplemental briefing. Moultrie submitted a letter brief on September 7, 2018, asserting that he received ineffective assistance of counsel, did not have an opportunity to cross-examine prosecution witnesses, and did not receive a fair and speedy trial.

As for the cross-examination of witnesses and a speedy trial, Moultrie waived his constitutional rights to confront and question witnesses and to a speedy trial when he entered into the plea agreement. Before accepting his no contest plea, the trial court verified that Moultrie understood these rights and was waiving these rights. The trial court found that Moultrie understood the consequences of waiving his constitutional rights and the waiver of constitutional rights was knowingly and intelligently made.

Consequently, Moultrie's waiver of constitutional rights is valid. (*People v. Collins* (2001) 26 Cal.4th 297, 305.)

Regarding his claim of ineffective assistance of counsel, we note that Moultrie initially faced a charge of human trafficking pursuant to section 236.1, subdivision (b), which carries a penalty of up to 20 years in prison, in addition to three other charges and several enhancements. Defense counsel was able to negotiate a favorable plea agreement that provided a stipulated sentence of seven years four months in prison, a plea to lesser charges, and dismissal of some counts and enhancements.

Here, the record on appeal does not contain evidence to establish defendant's claim of ineffective assistance of counsel. (*People v. Jenkins* (2000) 22 Cal.4th 900, 952.) Any claim of ineffective assistance of counsel should be resolved in a habeas corpus proceeding, rather than on direct appeal. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.