Filed 6/27/12 P. v. Vargas CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GABRIEL ANGEL VARGAS, Defendant and Appellant.	G046497 (Super. Ct. No. 10CF1215) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Gabriel Angel Vargas was charged with unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a), count one), street terrorism (Pen. Code § 186.22, subd. (a), count two), possession of burglary tools (Pen. Code § 466, count three) and possession of controlled substance paraphernalia (Health and Safety Code § 11364, count four).

Pursuant to a plea bargain, defendant pleaded guilty to the vehicle theft and street terrorism counts and admitted a prior vehicle theft and two prison priors. On his guilty plea form, commonly referred to as a *Tahl* form (see *In re Tahl* (1969) 1 Cal.3d 122), he offered the following facts: "In Orange County, California, on 5-15-10, I willfully & unlawfully: 1. took and drove a vehicle, not my own & without the owner's consent, intending to permanently deprive the owner of possession of the vehicle. At the time, I had a prior conviction for 10851 (a) VC; 2. actively participated in the Santa Nita criminal street gang as a gang member, knowing its members engage in a pattern of criminal gang activity, and I promoted & assisted felony conduct by members of the Santa Nita gang." On his *Tahl* form, defendant admitted he committed two prior crimes, a 2007 violation of Health and Safety Code section 11377, subdivision (a) and a 2004 violation of Vehicle Code section 10851, subdivision (a).

When the matter was called before the bench, the judge asked the prosecutor: "Ms. Gyves, if you could just inform the court if he were to go to trial, what's his exposure?" The prosecutor answered: "It would be — it would be six years eight months, your Honor." The judge stated to defendant: "All right. Now, the deal is, sir, you're going to get four years. I mean, that's the bottom line. You're going to get four years on [Orange County Superior Court case No. 10CF1215], and then you're going to get two years on [Orange County Superior Court case No. 10CF3126], but that's

going to run concurrent. So the bottom line is if you plead guilty today, you're going to get four years. I'm going to give you the credits." The court then asked defendant: "Is that what you want to do today?" Defendant responded: "Yes, your Honor."

The *Tahl* form included a lengthy series of disclosures, including the rights to an attorney, a jury trial, and to avoid self-incrimination, each of which defendant initialed that he had read and understood. Defendant also initialed the following statement: "I offer my plea of guilty freely and voluntarily, and with full understanding of all matters set forth in the accusatory pleading and this advisement and waiver of rights form. No one has made any threats or used any force against me, my family, or anyone else I know, in order to convince me to plead guilty in this case. Further, all promises that have been made to me to convince me to plead guilty are on this advisement and waiver of rights form."

On the record, the court explained defendant's rights to him: "You have a right to have a public trial. You have a right to be represented at all stages of the proceedings including the trial. You have a right to cross and confront witnesses. You have a right to testify. You have a right not to testify. You have a right to use the court's subpoena power to bring witnesses or documents into court that are favorable to you. [¶] Have you understood those rights that I've just explained to you?" Defendant said he did. The court then inquired of defendant: "Do you understand that by pleading guilty today, you're going to be giving up those rights?" Defendant answered: "Yes."

The court then advised defendant: "You also understand that if you're not a citizen of the United States, a conviction for the offenses charged will have the consequence of deportation, exclusion from admission to the United States, or a denial of naturalization pursuant to the laws of the United States? Do you understand that?"

Defendant answered: "Yes." A date was set for defendant's sentencing hearing.

Defendant filed a motion to withdraw his plea, claiming his lawyer misled him by telling him if he went to trial he faced life in prison. As it was clear from the earlier record that defendant was present when the court clarified that defendant faced a sentence of less than life in prison, the court denied defendant's motion to withdraw his plea. The court sentenced defendant to a total of four years in prison. Pursuant to the negotiated plea, the prosecutor moved to dismiss all remaining counts and enhancements. The date for a future restitution hearing was set and defendant was ordered to return for it.

Defendant filed a notice of appeal. A request for a certificate of probable cause was made, but we find no ruling on that request. We appointed counsel to represent him, and counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. Defendant was given 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from defendant.

We examined the entire record ourselves to see if any arguable issue is present. (*People v. Wende* (1979) 25 Cal.3d 436.) We have reviewed the plea itself and find nothing deficient. Defendant admitted he committed the charged crimes and provided details in the factual basis for the plea. He waived his rights both orally and in writing. Defendant's negotiated plea was free and voluntary. The record does not indicate any deficiency in his representation by counsel. We therefore agree with defendant's counsel that no issues are present that could undermine defendant's guilty plea.

Accordingly, the judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.