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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE ALONZO BARAJAS,

Defendant and Appellant.

G046562

(Super. Ct. No. 11CF1882)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
William R. Froeberg, Judge. Affirmed.

Eric Cioffi, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

* * *

INTRODUCTION

A jury found defendant Rene Alonzo Barajas guilty of felony possession of methadone, a controlled substance, and also found he had suffered prior convictions and served a prior prison term. We appointed counsel to represent defendant on appeal. Appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), appointed appellate counsel suggests we consider certain issues addressed *post*. This court provided defendant 30 days to file written argument on his own behalf. Since that 30-day time period passed, and defendant had not filed anything on his own behalf, he has submitted four letters that this court has accepted for filing.

We have examined the entire record, appointed appellate counsel's *Wende/Anders* brief, and defendant's letters; we find no arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

BACKGROUND

Defendant was charged in the first amended information (amended information) with one count of felony possession of a controlled substance (methadone) in violation of Health and Safety Code section 11350, subdivision (a). As to that count, the amended information alleged that pursuant to Penal Code section 1203, subdivision (e)(4), defendant had suffered two prior felony convictions. (All further statutory references are to the Penal Code.) The amended information also contained the following prior conviction allegations pursuant to sections 667, subdivisions (d) and (e)(2)(A) and 1170.12, subdivisions (b) and (c)(2)(A): (1) defendant was previously convicted of violating former section 12031, subdivision (a)(2)(B) and section 186.22, subdivision (b)(1); (2) defendant was previously convicted of violating sections 246.3 and 186.22, subdivision (b)(1); and (3) defendant was previously convicted of violating sections 496, subdivision (a) and 186.22, subdivision (b)(1). The amended information

alleged that pursuant to section 667.5, subdivision (b), defendant suffered a conviction for violation of sections 459 and 460, subdivision (b), for which he served a prior prison term.

At trial, Santa Ana Police Officer Camillo Kim testified that on July 1, 2011 around 6:15 p.m., he and his partner found defendant asleep in the driver's seat of a car that had its reverse lights on and was parked diagonally across a marked parking stall in a parking lot. Kim hit the roof of the car and yelled to wake up defendant. Eventually, defendant woke up, but appeared to be disoriented. Kim asked defendant to get out of the car. Kim found three pills, identified as methadone, in the driver's side door handle. Defendant told Kim that the pills were methadone and that a friend had given the pills to him to help kick a heroin habit; defendant admitted he did not have a prescription for them. Defendant similarly testified at trial that the pills were methadone and belonged to him.

The jury found defendant guilty as charged. At the bifurcated jury trial on the prior conviction and prior prison term enhancement allegations of the amended information, the jury found those allegations to be true.

The trial court sentenced defendant to a total prison term of five years by imposing a four-year term for the charged offense (double the two-year middle term pursuant to sections 667, subdivisions (d) and (e)(1) and 1170.12, subdivisions (b) and (c)(1)), plus a one-year consecutive term for the prior prison term enhancement under section 667.5, subdivision (b). The court exercised its discretion under section 1385 and struck two of his strikes. Defendant appealed.

ANALYSES OF POTENTIAL ISSUES

In the *Wende/Anders* brief, appointed appellate counsel suggests we consider whether (1) the trial court should have declared a mistrial because “the jury was erroneously informed about the possible punishment [defendant] faced” (capitalization & boldface omitted); (2) the trial court abused its discretion when it denied defendant's

motions pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), seeking substitution of his appointed trial counsel; and (3) defendant was competent to stand trial. As we explain *post*, none of the possible issues raised by appointed counsel constitutes an arguable issue on appeal.

I.

Evidence of Potential Punishment

During the trial on the charged offense, the prosecutor asked the trial court to admonish defendant that if he chose to testify, he was not to tell the jurors the matter was “a potential life case.” The court agreed that the potential punishment defendant faced was not relevant, and stated: “The defendant is admonished, if he does testify, not to discuss penalty or punishment.”

In response to defendant’s counsel’s question “[d]o you want to tell the jury the truth and what happened,” defendant testified: “Sorry, ladies and gentlemen, for taking your time. I’m here to tell you guys I need help. These gentlemen want to break me off with so much time that I don’t think I deserve. I had—I deserve a program. These guys getting caught for murder and so and so and get a program. Three little pills, three, and they want to offer me so much time for my first possession ever in my life. ¶ . . . I don’t want to do no more time.”

The trial court, defendant’s counsel, and the prosecutor thereafter met outside the presence of the jury and engaged in the following discussion:

“The Court: Given that little performance, there are one or two options. Either I inform the jury that he was offered probation and he was offered programs—he was offered no time and he wouldn’t take it or let the D.A. [(district attorney)] ask it, I don’t care.

“[Defendant’s counsel]: Honestly, I don’t really have a preference.

“[The prosecutor]: If the court wants to say it. I wasn’t going to be asking any questions.

“[Defendant’s counsel]: You want him to ask the questions?”

“[The prosecutor]: I’m not planning to ask him any questions if the court is going to admonish the jury on that. I don’t want to beat the guy up. I’m not going to ask him.

“[Defendant’s counsel]: Actually, I think it would be better if you asked him. I would prefer that [the prosecutor] asked him the questions.

“[The prosecutor]: Okay.”

During cross-examination, defendant admitted that before trial, the prosecutor had offered him a plea bargain whereby defendant would plead guilty to the charged offense and be sentenced to time served and placed on probation. He testified he rejected that offer. After defendant’s testimony, the trial court told the jury, “you will be instructed that you are not to consider punishment or penalty in arriving at your decision. I advised [defendant] earlier today not to discuss penalty or punishment when he testified. Obviously, he either forgot or disregarded that admonition. [¶] The only reason I allowed the district attorney to ask questions about that was to impeach his testimony that he was going to be locked up forever, in essence, is what he was saying. [¶] I’m still telling you not to consider penalty or punishment whatsoever. That is my field. And that’s what I will—if we get to that, I’ll take care of it, but do not consider penalty or punishment in any way.”

The trial court properly responded to the issue created by defendant. We find no arguable issue as to whether the trial court should have declared a mistrial in this case.

II.

Defendant’s Marsden Hearings

In the *Wende/Anders* brief, appointed appellate counsel suggests this court consider whether the trial court might have erred in denying defendant’s *Marsden* motions.

“When a defendant seeks discharge of his appointed counsel on the basis of inadequate representation by making what is commonly referred to as a *Marsden* motion, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of counsel’s inadequacy. [Citations.] ‘A defendant is entitled to have appointed counsel discharged upon a showing that counsel is not providing adequate representation or that counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.’ [Citations.]” (*People v. Cole* (2004) 33 Cal.4th 1158, 1190.)

We review denial of a *Marsden* motion under the abuse of discretion standard. (*People v. Cole, supra*, 33 Cal.4th at p. 1190.) “[A]ppellate courts will not find an abuse of that discretion unless the failure to remove appointed counsel and appoint replacement counsel would “substantially impair” the defendant’s right to effective assistance of counsel.’ [Citation.]” (*People v. Abilez* (2007) 41 Cal.4th 472, 488.)

We have reviewed the three sealed transcripts for the *Marsden* hearings held in this case. At each hearing, defendant was given the opportunity to explain the reasons for his dissatisfaction with his appointed trial counsel. Defendant did not show that his trial counsel failed to provide adequate representation or the existence of an irreconcilable conflict between him and his trial counsel. The underlying theme of each hearing was not defendant’s counsel’s representation, but defendant’s dissatisfaction with the prosecution’s plea bargain offer because defendant did not want to be placed on probation. The trial court made the proper inquiries and determinations, and did not err by refusing to discharge defendant’s appointed trial counsel.

III.

Defendant's Competence to Stand Trial

In the *Wende/Anders* brief, appointed counsel raises this issue: “Because of [defendant]’s statements during (1) the *Marsden* hearings, (2) discussions regarding the potential pleas in this matter, and (3) trial, was [defendant] competent to stand trial?”

“The due process clause of the Fourteenth Amendment to the United States Constitution and section 1367 prohibit the state from trying or convicting a criminal defendant while he is mentally incompetent. [Citation.] Section 1367, subdivision (a) states, ‘[a] person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.’ The defendant has the burden of proving his or her incompetency by a preponderance of the evidence. [Citation.] [¶] ‘Both federal due process and state law require a trial judge to suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant’s competence to stand trial.’” (*People v. Kaplan* (2007) 149 Cal.App.4th 372, 382-383.)

“‘Evidence of incompetence may emanate from several sources, including the defendant’s demeanor, irrational behavior, and prior mental evaluations.’ [Citation.] ‘More is required than just bizarre actions or statements by the defendant to raise a doubt of competency. [Citation.] In addition, a reviewing court generally gives great deference to a trial court’s decision whether to hold a competency hearing. . . . “‘An appellate court is in no position to appraise a defendant’s conduct in the trial court as indicating insanity, a calculated attempt to feign insanity and delay the proceedings, or sheer temper.’” [Citation.]’ [Citation.]” (*People v. Kaplan, supra*, 149 Cal.App.4th at p. 383.)

Our record does not show that defendant's competency was ever questioned in the trial court. The record shows defendant not only understood the nature of the criminal proceedings against him, but he actively participated in the court hearings, including the *Marsden* hearings, and testified at the trial on the charged offense as well as the trial on the prior conviction and prior prison term enhancement allegations. Defendant rejected the prosecution's plea bargain offer in this case in which he faced a potential 25-years-to-life sentence. Defendant explained to the court, however, that he believed the imposition of probation was not fair and overly harsh for his commission of the charged offense. Defendant's sometimes unresponsive and random comments during the court hearings and trial did not raise a reasonable doubt about his competence to stand trial.

IV.

Defendant's Letters

Defendant has submitted four letters to this court since the 30-day period the court offered for defendant to submit written argument on his own behalf; the court has accepted each of defendant's letters for filing. We have reviewed each of defendant's letters. None raises any arguable issue on appeal.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.