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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE NEFTALI MEJIA,

Defendant and Appellant.

H038083

(Monterey County

Super. Ct. No. SS091234)

Defendant Jose Neftali Mejia appeals from a judgment entered after he pleaded no contest to a variety of rape, sodomy, kidnapping and assault charges. On April 26, 2009, the date of the incident giving rise to these charges, victim Jane Doe was walking along a road when defendant stopped and offered her a ride home in his vehicle. She offered to pay him \$20 for a ride home and he agreed. Instead of taking her home, defendant kidnapped her, threatened to kill her with a pair of pruning shears and brutally raped her in a deserted farm field between Castroville and Salinas. Defendant left Doe in the field and drove off.

After Doe assisted deputies in locating the defendant's home and vehicle, she was able to identify defendant and his car. The Monterey County District Attorney charged defendant with two counts of forcible rape (Pen. Code, § 261, subd. (a)(2)), two counts of forcible sodomy (Pen. Code, § 286, subd. (c)), two counts of forcible rape by use of a foreign object, (Pen. Code, § 289, subd. (a)), one count of kidnapping (Pen. Code, § 207,

subd. (a)), one count of assault with a deadly weapon and instrument (Pen. Code, § 245, subd. (a)(1)), and one count of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1).) On May 21, 2009, defendant was arraigned and entered a plea of not guilty on all counts.

Prior to trial, defendant brought a *Marsden*¹ motion on the grounds that his counsel was providing ineffective assistance and had a conflict. The trial court held a hearing, considered all of defendant's claims and denied the motion. Thereafter, defendant withdrew his not guilty pleas and entered a plea of no contest to one count of forcible rape (Pen. Code, § 261, subd. (a)(2)), two counts of forcible sodomy (Pen. Code, § 286, subd. (c)), one counts of forcible rape by use of a foreign object, (Pen. Code, § 289, subd. (a)), one count of kidnapping (Pen. Code, § 207, subd. (a)), one count of assault with a deadly weapon and instrument (Pen. Code, § 245, subd. (a)(1).) On November 29, 2011, pursuant to the negotiated plea agreement, the trial court denied probation and sentenced defendant to 24 years in prison. In exchange for the stipulated sentence, defendant agreed to waive all federal and state writs and appellate remedies.

On January 26, 2012, the trial court filed defendant's letter stating that he wished to withdraw his plea agreement; the court treated that letter as a notice of appeal. On March 16, 2012, the court filed a second notice of appeal submitted by defendant, which challenged the validity of his plea. On April 2, 2012, the court granted defendant's request for a certificate of probable cause.

On appeal, appointed counsel filed an opening brief which states the case and the facts but raises no specific issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. On August 26, 2012, we received a letter from the defendant. In this letter, defendant complains of ineffective assistance of trial counsel. He claims that his attorney forced him to accept the plea bargain, lied to him,

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

failed to communicate with him, and failed to investigate the evidence against the defendant. These same claims were raised and rejected during the *Marsden* motion before the trial court. During the hearing, the court thoroughly questioned defendant's trial counsel regarding defendant's complaints. The court inquired about counsel's investigation and communication with his client, and concluded that trial counsel was experienced as a defense attorney and that his representation was "diligent[]" and "proper[]."

To show ineffective assistance of counsel on appeal, a defendant must show "that defense counsel's performance fell below an objective standard of reasonableness, i.e., that counsel's performance did not meet the standard to be expected of a reasonably competent attorney[.]" (*People v. Cunningham* (2001) 25 Cal.4th 926, 1003 (*Cunningham*); *Strickland v. Washington* (1984) 466 U.S. 668, 688.) Second, the defendant must show that there is "a reasonable probability that defendant would have obtained a more favorable result absent counsel's shortcomings." (*Cunningham, supra*, 25 Cal.4th at p. 1003.) Defendant provides no basis from which we could conclude that trial counsel's performance was lacking. Counsel diligently analyzed the case, conducted an independent investigation, sought additional discovery, negotiated with the district attorney, met and communicated with his client directly at all 10 court appearances and at the jail when he was preparing his client for trial. Additionally, counsel's investigator met with the defendant at the jail. On the record before us, we are unable to identify any shortcomings in trial counsel's performance.

Nor can defendant show prejudice. Trial counsel was able to negotiate a 24 year sentence for defendant even though the district attorney was prepared to seek a life sentence pursuant to Penal Code section 667.61, subdivisions (e)(1) and (e)(4). In the face of the physical evidence against defendant, the victim's identification and her injuries, defendant cannot show that he could have obtained a better result than the one he got under any circumstances.

Pursuant to our obligation as set forth in *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the record and defendant's letter and have found no arguable issue on appeal.

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.