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

THE PEOPLE,

Plaintiff and Respondent,

v.

LORENZO L. ANGELES,

Defendant and Appellant.

H039901

(Santa Clara County

Super. Ct. No. C1230513)

I. INTRODUCTION

Defendant Lorenzo L. Angeles appeals after pleading no contest to making a criminal threat. (Pen. Code, § 422.¹) Defendant also admitted that he had a prior conviction that qualified as a “strike” (§ 667, subs. (b)-(i), 1170.12) and that he had served two prior prison terms (§ 667.5, subd. (b)). He was sentenced to a three year eight month prison term.

On appeal, defendant contends the trial court violated his Sixth Amendment right to counsel when it failed to conduct a *Marsden* hearing² after he complained about trial counsel in his request for a certificate of probable cause. We will affirm the judgment.

¹ All further statutory references are to the Penal Code unless otherwise noted.

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

II. BACKGROUND

A. *Facts of the Offense*³

On April 20, 2012, at about 3:05 a.m., police responded to Sara C.'s home. Sara was sobbing, trembling, and appeared frightened. She reported that defendant, her boyfriend, had been calling her and texting her "all day" the previous day. He wanted to see her, but she did not want to see him.

After midnight, defendant began sending Sara threatening text messages. He then came over to her house, and they argued outside. Defendant left, but he later returned and began banging on a window, demanding that Sara let him in. Defendant stated that he "had nothing to lose," nowhere to stay, and that "if she did not let him in, he would kill her."

The police retrieved defendant's text messages from Sara's phone. They included: (1) "If you call the police on me I'll have nothing left to lose"; (2) "I'm going to kill you"; and (3) "I'll end this with my SKS (assault rifle)."

B. *Charges and Plea Proceedings*

On April 24, 2012, the District Attorney filed a complaint charging defendant with making a criminal threat. (§ 422.) The complaint alleged that defendant had two prior convictions for making a criminal threat, which both qualified as strikes (§ 667, subds. (b)-(i), 1170.12) and serious felonies (§ 667, subd. (a)), and that he had served three prior prison terms (§ 667.5, subd. (b)).

Deputy Public Defender Bichara Endrawos began representing defendant shortly after his arraignment. At a hearing on June 13, 2012, attorney Endrawos indicated that he had been negotiating a plea deal with the District Attorney and that they needed more time to work out some details. The prosecutor moved to dismiss one of the strike allegations, and the trial court granted the motion.

³ The facts of the offense are taken from the probation report.

Defendant was represented by Deputy Public Defender Melissa Wardlaw on November 7, 2012, the date set for preliminary hearing. Attorney Wardlaw indicated she had recently been assigned to the case, and she asked the court “whether a Section 17(b) motion^[4] had ever been brought on behalf of [defendant].” The trial court found nothing in the record to indicate that defendant’s prior attorney had ever made such a motion.

Attorney Wardlaw confirmed that she was bringing an oral motion pursuant to section 17, subdivision (b) at that time. She explained that defendant felt strongly that he had only engaged in “misdemeanor conduct” and that he was remorseful. She further argued that “[w]hile an objective review of the texts show obvious threats, he did not intend for his statements to be taken literally by the complaining witness” The prosecutor objected to reduction of the charge to a misdemeanor, and the trial court denied the motion.

Defendant then entered into a negotiated plea. He pleaded no contest to violating section 422 and admitted the strike and prior prison term allegations, in exchange for dismissal of the prior serious felony allegations and a sentence of three years eight months. The trial court set a sentencing hearing for January 25, 2013.

C. First Notice of Appeal

On November 28, 2012, defendant attempted to file a notice of appeal, in propria persona. He indicated that his appeal challenged the validity of his plea, and he included a request for a certificate of probable cause. In his request for a certificate of probable cause, defendant asked to have his case “look[ed] into,” asserting that his “[a]rrest was fabricated on numerous errors and violation of my due process rights.” He listed eight specific issues, most of which related to the issue of his guilt. In his sixth issue,

⁴ Section 17, subdivision (b) “invests the trial court with discretion to treat a felony ‘punishable . . . by imprisonment in the state prison or by fine or imprisonment in the county jail’ as a misdemeanor in certain circumstances.” (*People v. Mauch* (2008) 163 Cal.App.4th 669, 674.)

defendant stated that “while in court” he had inquired on numerous occasions “to reduce” but was “denied by Public defender as this is not even a ‘Immediate threat’ as we both were let go to alleviate situation therefore text were not on its face thus were hour prior and not even an issue until duress of situation.” (*Sic.*)

The clerk’s office sent defendant a letter notifying him that his notice of appeal was premature and would not be processed because his sentencing hearing was still pending.

D. Sentencing and Second Notice of Appeal

At the sentencing hearing on June 21, 2013, the trial court imposed a sentence of three years eight months, which included a 32-month term for the threat and a one-year term for one of the prior prison term allegations. The trial court struck the other two prior prison term allegations.

On July 8, 2013, defendant filed a second notice of appeal, again in propria persona. He indicated that his appeal challenged the validity of his plea as well as the sentence or other matters occurring after the plea. He included the same request for a certificate of probable cause that he had attached to his first notice of appeal.

III. DISCUSSION

Defendant contends that his initial request for a certificate of probable cause triggered the trial court’s duty to hold a *Marsden* hearing and that we must reverse and remand for such a hearing. He suggests that if the trial court had held a *Marsden* hearing, it might have also been required to appoint conflict counsel in order to assist defendant in filing a motion to withdraw his plea.

A. Legal Principles

In *Marsden*, the California Supreme Court held that when a defendant wishes to discharge his or her appointed counsel and substitute another attorney, the trial court must

give a defendant the opportunity to explain the reasons for the request. (*Marsden, supra*, 2 Cal.3d at pp. 123-125.)

A trial court's duty to conduct a *Marsden* hearing "arises 'only when the defendant asserts directly or by implication that his counsel's performance has been so inadequate as to deny him his constitutional right to effective counsel.' [Citation.]" (*People v. Leonard* (2000) 78 Cal.App.4th 776, 787 (*Leonard*)). "Mere grumbling" about counsel's failure to file a motion is insufficient. (*People v. Lee* (2002) 95 Cal.App.4th 772, 780 (*Lee*)). In addition, "[a]lthough no formal motion is necessary, there must be 'at least some clear indication by defendant that he wants a substitute attorney.' [Citation.]" (*People v. Mendoza* (2000) 24 Cal.4th 130, 157 (*Mendoza*)).

In *People v. Sanchez* (2011) 53 Cal.4th 80 (*Sanchez*), the Supreme Court addressed the common practice of appointing "'conflict' counsel" when "a criminal defendant indicates a desire to withdraw a guilty or no contest plea on the ground that current counsel has provided ineffective assistance. [Citation.]" (*Id.* at p. 84.) In the course of its decision, the court reiterated that a *Marsden* hearing is required only when "there is 'at least some clear indication by defendant,' either personally or through his current counsel, that defendant 'wants a substitute attorney.'" (*Id.* at pp. 89-90.)

B. Analysis

In this case, defendant contends a *Marsden* hearing was required when, in his certificate of probable cause, he asked for his case to be "look[ed] into," asserted that he was not guilty, and alleged that trial counsel should have argued for reduction of his offense because his threat was not "immediate." Defendant further contends the trial court should have determined whether to appoint substitute counsel to investigate a motion to withdraw the plea. We disagree.

First, no duty under *Marsden* arose here because defendant never alleged, even by implication, that trial counsel had been ineffective. (See *Leonard, supra*, 78 Cal.App.4th at p. 787.) Even if defendant was complaining about trial counsel when he asserted that

his desire “to reduce” was “denied by Public defender,” this was insufficient to trigger the *Marsden* duty. As noted above, no *Marsden* hearing is required where the defendant simply makes a complaint about counsel’s failure to file a motion (*Lee, supra*, 95 Cal.App.4th at p. 780), and none of the other issues listed in defendant’s certificate of probable cause related to trial counsel’s representation.

Moreover, even assuming that defendant’s list of complaints amounted to an implied assertion that trial counsel had been ineffective, no *Marsden* hearing was required because defendant never gave a “ ‘clear indication’ ” that he wanted to replace his appointed counsel. (*Mendoza, supra*, 24 Cal.4th at p. 157.) Nothing in defendant’s certificate of probable cause can be read as a request for new counsel, and defendant made no such request at the subsequent sentencing hearing. “A trial judge should not be obligated to take steps toward appointing new counsel where defendant does not even seek such relief.” (*People v. Gay* (1990) 221 Cal.App.3d 1065, 1070.) For the same reason, the trial court was not required to hold a hearing to determine whether to appoint substitute counsel to investigate a motion to withdraw the plea. (See *Sanchez, supra*, 53 Cal.4th at pp. 89-90.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MÁRQUEZ, J.

GROVER, J.