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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

BOBBY GONZALEZ,

Defendant and Appellant.

B279408

(Los Angeles County
Super. Ct. No. 6PH06209)

APPEAL from an order of the Superior Court of Los Angeles County, Mark G. Nelson, Sr., Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Bobby Gonzalez appeals the trial court's order that revoked his parole, arguing that the trial court abused its discretion when it granted defendant's motion to represent himself. We affirm because defendant was fully informed by the court of the risks of self-representation, and was competent to, and knowingly waived, his right to counsel.

FACTS AND PROCEDURAL BACKGROUND

1. Defendant's Parole Violations

In 2015, defendant was placed on parole, the terms of which required him to register as a sex offender and wear a GPS tracking device. Because he was a transient, defendant was obligated to reregister with the California Sex and Arson Registry Database every 30 calendar days. The terms of parole also prohibited defendant from disabling or removing the GPS tracking device, and required him to maintain the GPS by charging the device for one hour, twice a day.

On August 26, 2016, defendant failed to charge the battery on his GPS device. The next day, the device's battery died. Defendant also failed to reregister with the sex offender database within 30 days of his last registration. On August 26, 29, and 30, 2016, defendant called his parole officer and indicated that he intentionally did not reregister and purposefully allowed the battery to die so that he could appear before a judge regarding the terms of his parole.

2. Proceedings to Revoke Defendant's Parole and Defendant's Waiver of Counsel

On September 2, 2016, the California Department of Corrections and Rehabilitation filed a petition for revocation of defendant's parole. The petition alleged three parole violations: (1) failure to register as a sex offender, (2) absconding from parole supervision, and (3) disabling a GPS tracking device. On

September 8, 2016, defendant indicated that he completed a *Faretta* waiver and wished to represent himself.¹ The court admonished defendant against self-representation. We detail the court's admonishments and defendant's responses below. Following a discussion with defendant regarding the risks of self-representation, the court granted defendant in propria persona status.

On September 13, 2016, defendant filed a document requesting the state to produce the order that required him to register as a sex offender. The following day, the trial court held a probable cause hearing. There, defendant questioned his parole officer about the requirements for sex offender registration. At the hearing, defendant asserted that sex offender registration was required only under certain subdivisions of Penal Code section 243.4, the statute under which he was convicted that triggered registration requirements. The court explained that any conviction under section 243.4 (without regard to subdivision) triggered the registration requirement of section 290.

At the October 17, 2016 revocation hearing, defendant repeated his arguments and examined his parole officer. Following the contested hearing, the court sustained the amended petition and revoked defendant's parole. The court restored parole on the same terms and conditions as before the violation, with the addition of 90 days in county jail. Defendant received 78 days of custody credit: 39 actual days plus 39 days of conduct credit.

¹ *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

DISCUSSION

Defendant argues that the trial court abused “its discretion when it granted [his] motion to [act as his own lawyer] without first determining he was competent to waive his right to counsel.”

“As established by the high court in *Faretta*, a defendant has a federal constitutional right to the assistance of counsel during all critical stages of a criminal prosecution. (*Faretta v. California, supra*, 422 U.S. at p. 807.) A defendant may nonetheless waive this right and personally represent himself or herself, as long as the defendant’s waiver of the right to counsel is valid. An effective waiver requires that the defendant possess the mental capacity to comprehend the nature and object of the proceedings against him or her, and waive the right knowingly and voluntarily. [Citations.] There is no prescribed script or admonition that trial courts must use to warn a defendant of the perils of self-representation. But the record as a whole must establish that the defendant understood the ‘dangers and disadvantages’ of waiving the right to counsel, including the risks and intricacies of the case. [Citations.] If a defendant validly waives the right to counsel, a trial court must grant the request for self-representation. [Citation.] We review a *Faretta* waiver de novo, examining the entire record to determine the validity of a defendant’s waiver.” (*People v. Daniels* (2017) 3 Cal.5th 961, 977-978.)

To ensure a knowing and voluntary waiver of counsel, the court should make advisements: “(1) ensuring the defendant’s awareness of the ‘ “dangers and disadvantages” ’ associated with self-representation; (2) inquiring into the defendant’s intellectual capacity; and (3) informing the defendant that he or she cannot later claim inadequacy of representation.” (*People v. Daniels, supra*, 3 Cal.5th at p. 978.)

Here, the court confirmed that defendant knew the charges against him and understood the maximum penalty he could receive for the parole violations was 180 days in jail. The court also ascertained that it was defendant's first request ever to represent himself. Advising defendant of the disadvantages of self-representation, the trial court warned defendant that if he were to proceed in *propria persona*, he would be held to the same standard as an attorney, would have to file timely motions as an attorney would, and would have to adhere to the rules of evidence and procedure. The court warned that defendant's opponent, the district attorney, was an experienced, licensed attorney. The court also explained that it would not provide defendant any special assistance.

The court then reviewed defendant's written advisement and waiver of his right to counsel. In that document, defendant indicated that he was 49 years old, could read and write, and had completed high school. Defendant initialed each paragraph of the form, indicating that he understood his right to an attorney and right to self-representation. Defendant also initialed the paragraphs that discussed in detail the disadvantages of self-representation, showing that he understood the dangers and disadvantages. Defendant's initials indicated he understood he could no longer claim ineffective assistance of counsel on appeal from his conviction. Defendant signed the document, certifying that he read, understood, and considered all of the warnings in the three-page petition and still wanted to act as his own attorney.

At the hearing, defendant verified that these were his initials and signature on the waiver form. The court confirmed with defendant that he did not just put his initials in the boxes, but actually understood the waiver. The court again asked defendant whether he did not want to exercise his constitutional

right to an attorney. Defendant affirmed he did not want counsel. After this discussion with defendant, the court granted defendant's request to appear in propria persona.

We conclude that the court's thorough warnings against self-representation, and defendant's verbal and written acknowledgments of the dangers and risks show that defendant knowingly and voluntarily waived his right to counsel. Defendant's education level, discussion with the court, and verbal and written affirmations showed that he had the mental capacity to proceed in propria persona. He specifically acknowledged and understood the charges against him, the penalty he was facing, and the right he was waiving.

On appeal, defendant argues that he did not understand the purpose of the proceedings against him and the significance and consequences of his decision to waive his right to counsel. Defendant asserts that he "moved to represent himself because he incorrectly believed a contested parole revocation hearing was the proper venue to argue that the condition of parole requiring him to register was unlawful." Defendant argues he "obviously lacked the mental and intellectual capacity to understand the ramifications of his decision and, thus, lacked the ability to knowingly and voluntarily waive his right to counsel."

Contrary to those assertions on appeal, in the trial court defendant expressly acknowledged the charges, the possible penalty, and that the proceedings dealt with parole revocation. Defendant questioned his parole officer, testified on his own behalf, and made arguments addressing the sex offender registration requirements. That defendant's legal defense was unsound because he did not understand the meaning and application of Penal Code section 290 does not show he was mentally incompetent. "[A] lack of legal expertise or unfamiliarity with technical legal terms is not a proper basis for

denying pro se status.” (*People v. Poplawski* (1994) 25 Cal.App.4th 881, 894.) His missteps in self-representation reflect his lack of legal training and knowledge, not incompetence. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1070.) The court did not abuse its discretion in granting defendant’s motion to be self-represented.

DISPOSITION

We affirm the court’s order revoking defendant’s parole.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.