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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAUL UBALDO, JR.,

Defendant and Appellant.

B234323

(Los Angeles County
Super. Ct. No. PA067171)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,
Cynthia L. Ulfig, Judge. Affirmed.

Tom Stanley for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels,
Supervising Deputy Attorney General, Lauren E. Dana, Deputy Attorney General, for
Plaintiff and Respondent.

INTRODUCTION

Pursuant to a plea agreement, defendant and respondent Saul Ubaldo (defendant) pleaded no contest to attempted murder, and the trial court sentenced him to a life sentence with the possibility of parole. On appeal, defendant argues that the trial court abused its discretion when it denied his presentence motion to withdraw his plea.

We hold that because substantial evidence supported the trial court's findings underlying its ruling on the withdrawal motion, the trial court did not abuse its discretion in denying that motion. We therefore affirm the judgment of conviction.

PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant in count 1 with attempted willful, deliberate, and premeditated murder in violation of Penal Code sections 664 and 187, subdivision (a)¹ and in count 2 with assault with a semiautomatic firearm in violation of section 245, subdivision (b). The District Attorney alleged as to count 1 that defendant, or a principal, personally used and discharged a firearm within the meaning of section 12022.53, subdivisions (b), (c), (d), and (e)(1). The District Attorney further alleged as to counts 1 and 2 that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members within the meaning of section 186.22, subdivision (b)(1)(C). The District Attorney also alleged as to counts 1 and 2 that defendant personally inflicted great bodily injury upon the victim within the meaning of section 12022.7, subdivision (a). And the District Attorney alleged that defendant personally used a handgun within the meaning of sections 12022.5, 1192.7, subdivision (c), and 667.5, subdivision (c).

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

Defendant pleaded not guilty and denied the special allegations. Pursuant to a plea bargain reflected in a “felony advisement of rights, waiver, and plea form,” defendant pleaded no contest to count 1 and agreed to a life sentence with the possibility of parole with a minimum parole eligibility of seven years. Prior to sentencing, however, defendant filed a motion to withdraw his plea that the trial court denied. The trial court thereafter sentenced defendant to a life term with a minimum parole eligibility of seven years.

Defendant appealed from the judgment of conviction and the trial court granted a certificate of probable cause.

DISCUSSION

A. Background

On February 18, 2011, several months after the preliminary hearing, defendant entered into a plea agreement that was memorialized in a plea form. Defendant initialed the form and signed it, thereby acknowledging that, in return for a life sentence with the possibility of parole, he was pleading no contest to count 1, attempted murder.² At a hearing that same day, the trial court made a record of the plea agreement and questioned defendant to confirm that he was knowingly and voluntarily waiving his rights and agreeing to enter a plea of no contest. Following the questioning of defendant, the trial court found that defendant “expressly, knowingly, understandingly and intelligently waived his constitutional rights,” that defendant’s plea was “freely [and] voluntarily made with an understanding of the consequences,” and that there was “a factual basis for the plea.” The trial court therefore accepted defendant’s no contest plea.

² The prosecution agreed to move the trial court to strike count 2 and the special allegations.

On the date set for sentencing, defendant filed a written motion to withdraw his plea supported by his declaration and two exhibits.³ The declaration stated, in pertinent part, as follows:

“2. On a date in August 2010, after my eighteenth birthday on August 7, 2010, I was visited by Eugene ‘Chip’ Matthews at the East Facility at the Pitchess Detention Center. Mr. Matthews told me he was an attorney who had met with my mother and two of my sisters and that he could represent me in my case. Mr. Matthews convinced me that he could help me fight my case and I wanted my mother to hire him. At the time I was represented by a court appointed attorney. The next time I went to court was August 26, 2010 and I expected Mr. Matthews to be there. Another attorney, Walani ‘Buddy’ Taylor came into lock up and spoke to me. He said Mr. Matthews was ill and couldn’t be there and he would appear for me that day. On the next five court appearances, September 16, 2010, October 21, 2010, November 22, 2010, January 4, 2011, and February 10, 2011, Mr. Taylor represented me. On each occasion I was only . . . able to speak with him very briefly at court. I believed that Mr. Taylor was appearing for Mr. Matthews at each hearing. [¶] 3. On February 18, 2011, I went to court and Mr. Matthews came into lock up and spoke to me. At first I didn’t recognize him because it had been so long since I had seen him that one time in August 2010 at the East Facility. I had no idea that Mr. Matthews had been suspended from June 25, 2010 until October 23, 2010. Mr. Matthews convinced me to sign the plea document by telling me that I would have the chance to change my mind and not accept the plea at the next hearing. During the time when I was in court I was told that the sentence was life. I spoke to Mr. Matthews. He told me to go ahead with the plea and that I could reject it later if I wanted. I followed his advice. It was [not] until after the plea that in talking with others I realized I had just accepted a life sentence. I asked to speak to Mr. Matthews but wasn’t

³ The two exhibits were copies of receipts showing three payments made, presumably, to attorney Matthews and pages from the State Bar of California website showing that attorney Matthews was listed as not eligible to practice law from June 25, 2010, to October 23, 2010.

able to talk to him. I had my family call his office and ask them to file a motion to withdraw the plea but nothing was done. [¶] 4. I was not aware that Mr. Matthews was suspended from practicing law from June 25, 2010 until October 23, 2010 until my present attorney Tom Stanley told me last week. I was shocked that the person that was hired by mother in August 2010 to represent me was not an active attorney. This was a betrayal of the trust of my family and myself. [¶] 5. I am asking that this Court allow me to withdraw my no contest plea, I was not properly represented and I didn't understand what I was doing. I thought I still had the right to change my mind and reject the plea. I would not have agreed to plead no contest if I had known that the plea was final."

After hearing argument on the motion to withdraw the no contest plea, the trial court made the following ruling from the bench:

"The Court: The court as I indicated had reviewed all the documentation. [¶] . . . I note that in looking at the Exhibit B-1, Mr. Matthews which was eligible to practice law beginning October 23rd of 2010; yet I note that on November 22nd of 2010, January 4 of 2011, February 10 of 2011, the defendant was here in court with Mr. Taylor who had been making all of the appearances. I note that Wayani Taylor and the attorney Eugene Matthews are both from the Advance Law Group. [¶] On August 26th of 2010, the court allowed the substitution of Wayani Taylor substituted in as attorney of record for Larry Baker, the defendant was present here on that date and agreed that he wanted Larry Baker who was a bar panel attorney taken off the case and Mr. Taylor as his attorney. [¶] Mr. Taylor did indeed represent him until the date of the plea February 18th. [¶] [Defendant] had adequate time to discuss the proposed plea agreement with his attorney on that day. From the written record of the plea agreement, as well as the plea transcript, the defendant was adequately advised that he was pleading to seven years—rather to life, with the earliest parole date of seven years, specifically, on page 3 of the felony plea, by (reading): 'The Court: Sir, showing you this 4-page felony plea form, did you have a chance to read this form and discuss it with your lawyer? [¶] The Defendant: Yes, ma'am. [¶] The Court: Did you initial and sign the form? [¶] The Defendant: Yes,

ma'am. [¶] The Court: By initialing and signing the form, you are waiving and giving up your right to a jury trial. Do you understand that? [¶] The Defendant: Yes. [¶] The Court: Is that what you'd like to do at this time. [¶] [The Defendant:] Yes, ma'am. [¶] [The Court]: At line 15, other than the fact that you are going to be given a term of life with a minimum of seven years in state prison, has anyone promised you anything else to get you to change your plea? [¶] [The Defendant]: No, ma'am. [¶] [The Court]: Is anyone threatening you or making you change your plea? [¶] [The Defendant]: No, ma'am. [¶] [The Court]: Are you pleading freely and voluntarily and because you think it's in your best interest to do so? [¶] [The Defendant]: Yes, ma'am.' [¶] [The Court]: The court is satisfied the defendant made a knowing and intelligent waiver of his right to a jury trial. [¶] I note the incident at hand took place on April 16, 2010. Obviously, the people would be prejudiced at this point in time because a substantial period of time has passed since the defendant entered his plea. [¶] The D.A. was prepared to go forward with trial during the 30-day period from February 10. And the motion to withdraw is denied. [¶] The court finds that the defendant entered into the knowing, intelligent waiver of his rights. He clearly knew what the terms of the plea agreement were at the time. And, again, they are written on the written plea form that is initialed by the defendant at paragraph 2-A. And I also gave him the oral advisement; and he, again, reiterated that he understood he was giving up his right to a jury trial and what the term of imprisonment would be. [¶] So the motion to withdraw, again, is denied."

B. Legal Principles

"Section 1018 provides, in part: 'On application of the defendant at any time before judgment . . . , the court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice.' The defendant has the burden to show, by clear and convincing evidence, that there is good cause for withdrawal of his or her guilty plea. (*Ibid.*; *People v. Nance* (1991) 1 Cal.App.4th 1453, 1457 [2 Cal.Rptr.2d 670].) 'A plea may not be withdrawn simply because the defendant has changed his [or

her] mind.’ (*Nance*, at p. 1456.) The decision to grant or deny a motion to withdraw a guilty plea is left to the sound discretion of the trial court. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254 [69 Cal.Rptr.2d 784, 947 P.2d 1321]; *Nance*, at p. 1457.) ‘A denial of the motion will not be disturbed on appeal absent a showing the court has abused its discretion.’ (*Nance*, at p. 1456; see *Fairbank*, at p. 1254 [‘A decision to deny a motion to withdraw a guilty plea . . . is final unless the defendant can show a clear abuse of [the trial court’s] discretion.’].) ‘Moreover, a reviewing court must adopt the trial court’s factual findings if substantial evidence supports them.’ (*Fairbank*, at p. 1254.)” (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1415-1416.)

“To establish good cause to withdraw a guilty plea, the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1207-1208 [38 Cal.Rptr.2d 592].) The defendant must also show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake. (*In re Moser* (1993) 6 Cal.4th 342, 352 [24 Cal.Rptr.2d 723, 862 P.2d 723].)” (*People v. Breslin*, *supra*, 205 Cal.App.4th at p. 1416.)

C. Analysis

In this case, there was substantial evidence to support the trial court’s factual findings that defendant had knowingly and voluntarily waived his rights and entered the plea. The plea form that defendant signed expressly set forth the sentence to which defendant agreed, and he checked and initialed each box that advised him that he was waiving his Constitutional rights. Moreover, the transcript of the hearing at which defendant pleaded no contest also confirms that the trial court again advised defendant of the sentence he was accepting and each of the Constitutional rights he was waiving. On the record during direct questioning by the trial court, defendant confirmed that he understood the sentence he was accepting, the Constitutional rights he was waiving, and the consequences of his plea.

Because the trial court's findings were supported by substantial evidence, we are bound by them. Those findings, in turn, support the conclusion that the trial court did not abuse its discretion in denying defendant's motion to withdraw his plea.

That attorney Matthews was ineligible to practice from late June 2010 to late October 2010 does nothing to alter our conclusion. That period of ineligibility preceded defendant's plea by over three months, and the record confirms that during that period and thereafter, defendant was represented by another attorney from attorney Matthew's firm, attorney Taylor. And, although defendant claimed that he would not have agreed to the plea bargain if he had known that attorney Matthews had been ineligible to practice for some period of time prior to defendant's plea, there is nothing in the record to support that claim. To the contrary, as discussed above, the record strongly supports the conclusion that defendant knowingly and voluntarily pleaded no contest pursuant to the plea bargain and the advisements of his rights that he received prior to entering the plea.

Similarly, although defendant now claims that he understood from attorney Matthews that he could change his mind and not accept the plea at the next hearing, nothing in the record supports such an understanding. Instead, the record clearly reflects that defendant's understanding of his plea was unequivocal and unconditional. Based on that record, the trial court rejected defendant's claim that he misunderstood the consequences of his plea when he made it, a credibility determination we must also accept on appeal under the applicable standard of review discussed above.

DISPOSITION

The judgment of conviction is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.