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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.

VALENTINO RODRIGUEZ,

Defendant and Appellant.

B236019

(Los Angeles County  
Super. Ct. No. KA093765)

APPEAL from an order of the Superior Court of the County of Los Angeles,  
Steven D. Blades, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, Ann Krausz,  
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle,  
Supervising Deputy Attorney General, Michael C. Keller, Deputy Attorney General, for  
Plaintiff and Respondent.

## INTRODUCTION

A jury found defendant and appellant Valentino Rodriguez (defendant) guilty of petty theft, and the trial court sentenced him to 15 years in prison. On appeal, defendant contends that the trial court abused its discretion when it denied his pretrial request for self-representation pursuant to *Farretta v. California* (1975) 422 U.S. 806 (*Farretta*).

We hold that the trial court did not abuse its discretion in denying defendant's request for self-representation. We therefore affirm the judgment of conviction.

## FACTUAL BACKGROUND

On March 26, 2011, around midnight, Los Angeles County Sheriff's Deputy Kristian Kozelchik and his partner, Deputy Richard Laflin, while working patrol, responded to a tire store on Valley Boulevard just east of the 60 freeway. They stopped their vehicle in a dirt area between the freeway off ramp and the fence enclosing the tire store. The fence was made of corrugated metal and was over eight feet tall. When the deputies exited their vehicle, they heard a banging sound, "like someone kicking at the corrugated fencing." They ran in the direction of the noise and saw defendant fall from the top of the fence to the ground.

The deputies approached defendant who looked as if he was "going to run." Because defendant saw other deputies around the tire store, "he just stopped and fell to the ground." When Deputies Kozelchik and Laflin reached defendant, they noticed more than a dozen tires and rims in the area where defendant fell from the fence. They then searched defendant and found approximately 15 lug nuts in his pocket. Deputy Kozelchik noticed that defendant was "extremely dirty" and that his hands were "filthy." Deputy Laflin also noticed that defendant's hands were dirty and that he "seemed a little disoriented." When Deputy Laflin investigated the scene, he saw a ladder up against the inside of the fence in the area from where defendant had fallen.

Javier Cortes was the owner of the tire store where the March 26, 2011, incident involving defendant took place. He went to the store that night after being called by the Sheriff's Department. Deputies at the scene showed him tires, rims, and lug nuts outside

the fence of the store. The tires, rims, and lug nuts had been inside the fenced-in yard of the store when Cortes locked the store earlier that night. Cortes did not give defendant permission to take the tires, rims, or lug nuts.

### **PROCEDURAL BACKGROUND**

In an information, the Los Angeles County District Attorney charged defendant with petty theft with three prior theft-related offenses in violation of Penal Code section 666, subdivision (a).<sup>1</sup> The District Attorney alleged that defendant had suffered two prior violent or serious felonies within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). The District Attorney further alleged that defendant had suffered nine prior felony convictions for which prison terms had been served.

Following trial, the jury found defendant guilty and, in a subsequent proceeding, found that defendant had suffered two prior strike convictions and had served nine prior prison terms. At the sentencing hearing, the prosecution moved to strike one of the prior strike convictions and the trial court granted that motion. The trial court sentenced defendant to an aggregate prison term of 15 years comprised of a three-year upper term sentence, doubled based on the prior strike conviction, and an additional nine years for the nine prior prison terms.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## DISCUSSION

### A. Background

At the May 25, 2011, arraignment, defendant made a Marsden motion to replace his trial counsel that the trial court denied. The prosecutor then informed the trial court that she had offered defendant a term of seven years, and the trial court offered to allow defendant to take advantage of that offer, but defendant rejected it. Defendant's trial counsel then informed the trial court that she had "strongly advised [defendant] to accept that offer and he [was] rejecting the offer against counsel's advice." The trial court responded to that information as follows: "The Court: The record is abundantly clear on that. So [defendant], jury trial July 19th, 2011, as day 55 of 60 days. For trial readiness, July 15th, 2011. This court will make a note in the file as well as minute order that this case is not to be disposed of prior to trial. No offers will be relayed, nor accepted by this court or any court. This matter will be resolved by way of jury trial."

At the July 15, 2011, trial readiness conference, the trial court, counsel, and defendant had the following exchange: "The Court: The matter is here for readiness conference. [Prosecutor] are you ready for trial? [¶] [Prosecutor]: I am, your Honor, and I have relayed to [defendant] the people's last offer. He's not indicated that he would accept that. He keeps indicating he wants alternative offers, and if that's not available, then he wants to represent himself. [¶] The Court: Well, [defendant], are you ready to go to trial Tuesday if you represent yourself? [¶] [Defendant]: I'll do the best that I can. [¶] The Court: No. Are you ready to go to trial? If not, you are not going to represent yourself, and you are not going to get any better offer than what you just got, which is 84 months because you are looking at 34 years to life, and you are a poster child for 25 years to life with your record. [¶] . . . [¶] The Court: Well, if you want, I'll recommend . . . Corcoran or Donovan where you can get drug treatment from the program, but you are not staying out of prison if you are convicted. You are going to prison. The question is for how long? And you are looking at 34 years to life. That would be the rest of your life [in] Corcoran Prison. I don't think you want to die [in] Corcoran Prison. [¶]"

[Defendant]: So is there any way we can get some sort of assistance for me or something? You know, I'll do drug program, sir. That's all I'm asking for because I've done all this time and stuff, and it's like is that the solution for the problem to my life?

[¶] The Court: You have Donovan opportunity to plead for 84 months. It's up to you whether you want to take it or take a chance to do 34 to life. Thing is when you go to prison, you can request to be examined. I can recommend Corcoran or Donovan for drug treatment. The thing is if you are convicted, you are going to prison. It's just a question for how long. [¶] [Defendant]: So I can have no mercy from this court . . . . [¶] The Court: Pardon me? [¶] [Defendant]: Can I have any mercy? [¶] The Court: Yes. Instead of 34 to life, it's 84 months. [¶] [Defendant]: I think it's a little extreme. I was under the influence at the time when it happened. If I was not under the influence, I would not have done nothing like that. [¶] The Court: You are a poster child for three strikes and you are out. I mean, every chance you get, you steal, break into people's homes, try to break into people's homes. You have two prior first degree residential burglaries. You are a danger out there. [¶] You are not staying on the street if you get convicted, so it's a question do you want to accept that 84 months, which is seven years, or do you want to roll the dice and potentially get a lot more? [¶] [Defendant]: I can't have no type of program, sir? That's what I am asking . . . . [¶] The Court: I'll recommend something [like] Corcoran prison, but you are not getting a program on the outside. Don't you understand that you are going to prison? Start with that premise. [¶] If you are convicted, if you want a program, you get a program [in] Corcoran prison, but you are not staying out and getting a program. You've had many years to get a program on your own, but the only time you want a program . . . . [¶] [Defendant]: Well, the reason why I said because I never had a program. [¶] The Court: Well, you had [an] opportunity to get programs on your own, but you did not take advantage. You could have talked to your parole agent all the times you were on parole. You did not do it. Now the answer's no, you are not getting a program instead of prison. [¶] [Defendant]: The only thing I was ignorant at those times. I was very young. I'm a late bloomer, sir. [¶] The Court: Well, you are going to prison—end of discussion—if you are convicted,

but if you are not convicted, then you can go get a program all you want if you are acquitted. [¶] [Defendant]: Well, can I have another attorney, then? A state appointed? [¶] The Court: You've already had two lawyers, actually. [¶] [Defendant]: I never asked for a lawyer. [¶] The Court: Excuse me. Last time you were [in] court on May 25, you did a hearing to fire [defense counsel], which was denied. Instead you got another lawyer. You have a new lawyer. You just don't like the offer. You want to shoot the messenger. [¶] [Defendant]: That's what you want to do to me. Shoot me. I'm just saying with my heart speaking. [¶] The Court: You are trying to con me. Look. I've been around the block a few times. [¶] [Defendant]: And Jesus Christ is my witness. I'm not trying to con you. Strike me dead right now with a heart attack. [¶] The Court: Look. I've been down the street with too many folks like you. You are not conning me; you are not getting a program; you are not getting another lawyer. [¶] [Defendant]: Well, let me go pro per, then. [¶] The Court: Only if you can answer ready for trial. If you can't, the answer is denied. [¶] [Defendant]: Well, if I do not get to go over there to see what I can do for myself, then. [¶] The Court: Your motion is denied. You cannot answer ready for trial. [Defense Counsel] are you ready? [¶] [Defense Counsel]: Yes, your Honor. [¶] The Court: People ready? [¶] [Prosecutor]: Yes. [¶] The Court: Jury trial Tuesday, July 19. Oh, that 84 month offer, that's gone."

## **B. Legal Principles**

"A trial court must grant a defendant's request for self-representation if the defendant unequivocally asserts that right within a reasonable time prior to the commencement of trial, and makes his request voluntarily, knowingly, and intelligently. (*People v. Welch* (1999) 20 Cal.4th 701, 729 [85 Cal.Rptr.2d 203, 976 P.2d 754]; *People v. Windham* (1977) 19 Cal.3d 121, 127-128 [137 Cal.Rptr. 8, 560 P.2d 1187] (*Windham*).) As the high court has stated, however, '*Faretta* itself and later cases have made clear that the right of self-representation is not absolute.' (*Indiana v. Edwards* (2008) 554 U.S. 164, 171 [171 L.Ed.2d 345, 128 S.Ct. 2379, 2384]; see *Jones v. Barnes* (1983) 463 U.S. 745, 751 [77 L.Ed.2d 987, 103 S.Ct. 3308], citing *Faretta*, *supra*, 422

U.S. 806 [‘we have held that, with some limitations, a defendant may elect to act as his or her own advocate . . .’].) Thus, a *Faretta* motion may be denied if the defendant is not competent to represent himself (*Indiana v. Edwards*, at p. 178 [128 S.Ct. at p. 2388]), is disruptive in the courtroom or engages in misconduct outside the courtroom that ‘seriously threatens the core integrity of the trial’ (*People v. Carson* (2005) 35 Cal.4th 1, 6 [23 Cal.Rptr.3d 482, 104 P.3d 837]; see *id.* at p. 8; *Faretta*, at p. 834, fn. 46), or the motion is made for purpose of delay (*People v. Marshall* (1997) 15 Cal.4th 1, 23 [61 Cal.Rptr.2d 84, 931 P.2d 262] (*Marshall*)).” (*People v. Lynch* (2010) 50 Cal.4th 693, 721-722.)

“Likewise, we have long held that a self-representation motion may be denied if untimely. (*Windham, supra*, 19 Cal.3d at pp. 127-128.) Under *Windham*, a motion is timely if made ‘a reasonable time prior to the commencement of trial.’ (*Id.* at p. 128, fn. omitted.) ‘[O]nce a defendant has chosen to proceed to trial represented by counsel,’ a defendant’s motion for self-representation is ‘addressed to the sound discretion of the court.’ (Fn. omitted.) (*Windham*, at p. 128.) We observed that our imposition of a timeliness ‘requirement should not be and, indeed, must not be used as a means of limiting a defendant’s constitutional right of self-representation.’ (*Id.* at p. 128, fn. 5.) Rather, the purpose of the requirement is ‘to prevent the defendant from misusing the motion to unjustifiably delay trial or obstruct the orderly administration of justice.’” (*People v. Burton* (1989) 48 Cal.3d 843, 852 [258 Cal.Rptr. 184, 771 P.2d 1270] (*Burton*)).” (*People v. Lynch, supra*, 50 Cal.4th at p. 722.)

“In assessing an untimely self-representation motion, the trial court considers such factors as ‘the quality of counsel’s representation of the defendant, the defendant’s prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion.’ (*Windham, supra*, 19 Cal.3d at p. 128.)” (*People v. Lynch, supra*, 50 Cal.4th at p. 722, fn. 10.)

### C. Analysis

Defendant contends that the trial court abused its discretion when it denied his request to represent himself. According to defendant, the trial court failed to consider all of the factors set forth in *Windham, supra*, 19 Cal.3d at p. 128.

Contrary to defendant's assertion, the record supports a reasonable inference that defendant was misusing the *Faretta* self-representation motion to delay unjustifiably trial or obstruct the orderly administration of justice. Prior to making his motion, defendant rejected the prosecutor's offer of a seven-year term and instead moved to replace his attorney, a motion the trial court denied. Thereafter, defendant's counsel was replaced. On the day defendant made his *Faretta* motion, he again rejected an offer of a seven-year term and instead tried to persuade the trial court to order him to attend a drug treatment program in lieu of prison. When the trial court refused to order a drug treatment program, defendant asked the trial court to replace his new lawyer. After the trial court refused to replace his second attorney, defendant made his self-representation request. In response, the trial court indicated its willingness to grant the request, but only if it would not cause a delay in trial. When defendant failed to assure the trial court that he would not need a continuance, the trial court denied the *Faretta* motion.

Based on the foregoing, it does not appear that the trial court's denial of the *Faretta* motion was an abuse of discretion, i.e., arbitrary, capricious, or patently absurd. We need not reach the issue as to whether defendant made an unequivocal request to represent himself because, even assuming *arguendo* defendant's request was unequivocal, the trial court reasonably concluded that defendant was using the *Faretta* motion in an attempt to obtain a plea agreement to which he was not entitled and which was unlikely. Such misuse of the motion to delay or obstruct the orderly administration of justice warranted the denial of that motion.



**DISPOSITION**

The judgment of conviction is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.