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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RENEE YOLANDA RIOS,

Defendant and Appellant.

B264046

(Los Angeles County
Super. Ct. No. MA065763)

APPEAL from an order of the Superior Court of Los Angeles County.

Christopher G. Estes, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Zee Rodriguez and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

Renee Yolanda Rios appeals from the order denying her motion to withdraw a plea of no contest to one count of sale, transportation, or offer to sell a controlled substance. (Health & Saf. Code, § 11352, subd. (a).) The court granted appellant's request for a certificate of probable cause. Appellant contends the court abused its discretion because substantial evidence showed that she was coerced and misled into entering a plea that was part of a package deal with her codefendants. We disagree and affirm.

RELEVANT PROCEEDINGS¹

A six-count felony complaint charged appellant with driving or taking a vehicle without consent (Veh. Code, § 10851, count 1), two counts of possession for sale of a controlled substance (Health & Saf. Code, §§ 11351 (heroin), count 2, 11378 (methamphetamine), count 3), two counts of sale, transportation, or offer to sell a controlled substance (Health & Saf. Code, §§ 11352, subd. (a) (heroin), count 4, 11379, subd. (a) (methamphetamine), count 5), and misdemeanor driving with a suspended or revoked license² (Veh. Code, § 14601.2, subd. (a), count 6). The complaint further alleged two prior strike convictions (Pen. Code, §§ 667, subs. (a)(1) & (b)–(i), 1170.12, subs. (a)–(d)) and three prior prison terms (*id.*, § 667.5, subd. (b)).³ Appellant pleaded not guilty and denied the special allegations.

On April 22, 2015, prior to a scheduled preliminary hearing, appellant and codefendant Harroun entered into plea agreements with the prosecution. Appellant agreed to withdraw her plea of not guilty, plead no contest to the sale, transportation, or

¹ Appellant challenges only the denial of her motion to withdraw her guilty plea, which does not implicate any issue regarding the facts of the underlying offense. We therefore omit the traditional statement of facts. (*People v. White* (1997) 55 Cal.App.4th 914, 916, fn. 2.)

² Codefendant Raymond Morales was also charged in count 1; codefendants Brianne Harroun and Vincent Graham were charged along with appellant in count 2; and in count 3 appellant and all three codefendants were charged. Appellant alone was charged in counts 4 through 6.

³ Further statutory references are to the Penal Code.

offer to sell a controlled substance (count 4), and admit one of the strike priors and one prior prison commitment, for an agreed term of nine years in state prison and dismissal of the remaining counts and allegations.

Appellant acknowledged and waived her constitutional rights. After confirming that appellant understood the nature and consequences of her plea and admissions, the court found she was entering the plea freely and voluntarily. Finding a factual basis for appellant's plea and admissions, the court accepted the plea, found appellant guilty on count 4, and found the admitted allegations true. The court set a sentencing hearing for May 7, 2015.

At sentencing before a different judge, appellant sought to withdraw her plea on the grounds that she was not guilty of the charge and she had "felt pressured by the situation" and coerced to accept the plea as part of a package deal with her codefendants. Appellant explained that she had believed Harroun's daughter was critically ill and had taken the deal to free Harroun to be with her daughter. She later learned that Harroun had lied to her.

The trial court denied appellant's motion to withdraw her plea: "[L]ooking at the totality of the circumstances in this case, considering the statements of the defendant, the attorneys, the nature of the disposition, the defendant's criminal history, the transcript that the court has just summarized as it applied to [appellant], the court does not find that her application to withdraw the plea is credible. [¶] The court further finds that there is not good cause to a clear and convincing standard, given the circumstances."⁴

DISCUSSION

Section 1018 provides in relevant part: "On application of the defendant at any time before judgment or within six months after an order granting probation is made if

⁴ After denying the motion to withdraw the plea, the court sentenced appellant to a term of nine years in state prison in accordance with the plea agreement. The sentence consisted of the mid-term of four years on count 4, doubled to eight years pursuant to the Three Strikes law, plus one year for a prior prison term. The remaining counts and allegations were dismissed in accordance with the plea agreement.

entry of judgment is suspended, 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.” (§ 1018; *People v. Ravaux* (2006) 142 Cal.App.4th 914, 917.)

“A plea may not be withdrawn simply because the defendant has changed his [or her] mind.” (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) Rather, it is the defendant’s burden to show good cause in seeking to withdraw a plea of guilty or no contest. (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1415–1416; *Nance*, at p. 1457; see also *People v. Ramirez* (2006) 141 Cal.App.4th 1501, 1506 [no contest plea treated same as guilty plea under section 1018].) “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.” (*Breslin*, at p. 1416; *People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Alexander* (2015) 233 Cal.App.4th 313, 318.) In addition, the defendant must show prejudice; that is, but for the mistake, she would not have accepted the plea agreement. (*In re Moser* (1993) 6 Cal.4th 342, 352; *Breslin*, at p. 1416.) Finally, the trial court may take the defendant’s credibility into consideration, and the appellate court must adopt any factual findings by the trial court that are supported by substantial evidence. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254; *Breslin*, at p. 1416.)

Although section 1018 is to be liberally construed, the decision to grant or deny a motion to withdraw a guilty plea “ ‘ “rests in the sound discretion of the trial court.” ’ ” (*People v. Fairbank, supra*, 16 Cal.4th at p. 1254.) The reviewing court will not disturb the denial of such a motion except upon the clear demonstration of an abuse of the trial court’s discretion. (*In re Brown* (1973) 9 Cal.3d 679, 685; *People v. Alexander, supra*, 233 Cal.App.4th at p. 318.) “ ‘ A trial court will not be found to have abused its discretion unless it “exercised its discretion in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.” ’ ” (*People v. Lancaster* (2007) 41 Cal.4th 50, 71; *In re Cortez* (1971) 6 Cal.3d 78, 85 [“ ‘The term [judicial discretion]

implies absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason' ”].)

Appellant asserts the court's credibility determination was “not supported by the totality of the evidence presented at the hearing.” To the contrary, appellant presented no evidence at all beyond her unsubstantiated claim that she took the plea under the mistaken belief that Harroun's child was critically ill. The trial court properly assessed appellant's credibility and found it wanting.

Nothing about the trial court's decision in this case appears arbitrary, whimsical, or capricious. Prior to ruling on the motion, the trial court carefully reviewed the transcript of the hearing at which appellant entered her plea. The court noted that the details of the plea were stated clearly on the record. Appellant averred that she understood the charges and allegations against her. She was represented by counsel, she affirmed that she had had an opportunity to speak with her lawyer, and she confirmed that after doing so, she wished to accept the People's offer.⁵ The court observed that after appellant was advised of her constitutional rights, she acknowledged and waived each of them. The court also found that appellant had been advised of and stated she understood the consequences of her plea and admissions. Appellant declared she was entering her plea freely and voluntarily, and denied that anyone had threatened her or made any promises to induce her to enter a plea.

Neither did the court abuse its discretion in concluding that the lengthy term of appellant's negotiated sentence did not constitute clear and convincing evidence of coercion. In this regard, the court observed that appellant stood in a very different position than her codefendants, who received much lighter sentences. Whereas appellant was charged with five felonies and one misdemeanor in this case, two of her

⁵ Appellant's attorney advised the court that although appellant was represented by stand-in counsel at the time of the plea, he had had lengthy discussions with appellant regarding the allegations in the case and the maximum possible sentence she would face should she lose at trial.

codefendants faced only two felony charges, and one codefendant was charged in just one felony count. The court also noted that appellant had two strike priors and three prior prison terms, while no priors were alleged against her codefendants. In light of its conclusion that appellant was very differently situated than her codefendants, we find no abuse of discretion in the trial court's rejection of appellant's argument that her agreement to such a lengthy prison term was involuntary due to her concern for Harroun.

We also find no merit to appellant's claim that her acceptance of a "less than favorable plea agreement" at such an early stage of the case "may be substantial circumstantial evidence" that she was "likely" acting under the "coercive effect" of concern for her codefendant. In so arguing, appellant overlooks this court's limited role in reviewing the trial court's denial of the motion to withdraw: In determining whether the trial court abused its discretion, we are bound by the trial court's findings of fact that have substantial support in the record. (*People v. Fairbank, supra*, 16 Cal.4th at p. 1254.) Thus, " '[a]ll questions of the weight and sufficiency of the evidence are addressed, in the first instance, to the trier of fact, in this case, the trial judge. We cannot reverse his order if there is substantial evidence or a reasonable inference to be drawn from it which supports the order. Where two conflicting inferences may be drawn from the evidence it is our duty to adopt the one supporting the challenged order.' " (*People v. Harvey* (1984) 151 Cal.App.3d 660, 667, quoting *People v. Savin* (1940) 37 Cal.App.2d 105, 108.) By asserting that the trial court's ruling should be overturned on the ground that there "may be substantial circumstantial evidence" to show good cause for withdrawing her plea, appellant calls on this court to reweigh the evidence and draw inferences contrary to the trial court's findings. This we will not do.

Appellant fails to show that her misplaced sympathy for codefendant Harroun amounted to coercion, made her plea any less knowing or intelligent, or otherwise overcame the exercise of her free judgment. (*People v. Breslin, supra*, 205 Cal.App.4th at p. 1416.) The trial court was not required to give greater credence to appellant's after-the-fact explanation for taking the plea than to the formal statements she made in open court when she entered her plea, and did not abuse its discretion in refusing to do so.

(See *Blackledge v. Allison* (1977) 431 U.S. 63, 74 [“Solemn declarations in open court carry a strong presumption of verity”].)

Characterizing her plea as part of a package deal plea bargain, appellant further contends the court erred by failing to undertake a heightened examination to ensure the plea was voluntary and not the product of coercion. (See *In re Ibarra* (1983) 34 Cal.3d 277, 287–288 (*Ibarra*), disapproved on another ground in *People v. Howard* (1992) 1 Cal.4th 1132, 1175–1178.) Appellant’s claim fails in the first instance because there is no evidence that appellant’s plea was in fact part of any package deal plea agreement. Thus, no obligation to “conduct an inquiry into possible coercive forces prior to accepting the guilty plea” or in ruling on the motion to withdraw the plea arose in this case. (*Ibarra*, at p. 287.)

A “ ‘package-deal’ ” plea bargain is one “in which the prosecutor offers a defendant the opportunity to plead guilty to a lesser charge, and receive a lesser sentence, contingent upon a guilty plea by *all* codefendants.” (*Ibarra, supra*, 34 Cal.3d at p. 286.) While not “intrinsically coercive,” such plea agreements may involve “[e]xtraneous factors not related to the case or the prosecutor’s business,” requiring special scrutiny to ensure a voluntary plea. (*Id.* at pp. 283, 287.) *Ibarra* mandated that trial courts undertake an inquiry into the totality of the circumstances—including promises of leniency to third parties and threats to the defendant—whenever a plea is part of a “package-deal.” (*Id.* at p. 288; *People v. Sandoval* (2006) 140 Cal.App.4th 111, 125.) “The *Ibarra* court explained that a trial court should carefully scrutinize pleas in which the defendant shares a special relationship with a person who has been promised a benefit contingent on the defendant pleading guilty and those cases in which a third party has threatened the defendant.” (*Sandoval*, at p. 125; *Ibarra*, at p. 289.)

Here, appellant was charged with multiple crimes along with three codefendants. Although she entered her plea at the same time as one of her codefendants, nothing in the record suggests the deal offered to appellant was contingent on guilty pleas by any, much less all, of her codefendants. Indeed, two of the defendants in the case received no mention whatsoever during the plea hearing. Although appellant failed to meet the

minimum threshold requirement for special scrutiny of her plea under *Ibarra*, the trial court nevertheless carefully examined the totality of circumstances surrounding the plea and found no coercion.

We will not disturb the trial court's findings. Appellant failed to satisfy her burden of showing, by clear and convincing evidence, that her plea was in any way coerced. Moreover, we find nothing in the record to suggest that the trial court failed to conduct an adequate inquiry or abused its discretion in denying appellant's motion to withdraw her plea.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.