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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRELL PRESSWOOD,

Defendant and Appellant.

B288731

(Los Angeles County
Super. Ct. No. BA463585)

APPEAL from a judgment of the Superior Court of Los Angeles County. David M. Horowitz, Judge, and Rand S. Rubin, Judge. Affirmed.

Michele A. Douglass, 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, Senior Assistant Attorney General, Noah P. Hill and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Darrell Presswood (defendant) argues that his plea to a drug charge is invalid because the trial court did not establish a factual basis for his plea. A factual basis is required only when a defendant enters a conditional plea. (Pen. Code, § 1192.5¹; *People v. Holmes* (2004) 32 Cal.4th 432, 438 (*Holmes*)). Because defendant has not established that his plea was “conditional,” we affirm.

FACTS AND PROCEDURAL BACKGROUND

In December 2017, the People filed a criminal complaint charging defendant with possessing phencyclidine (PCP) for sale (Health & Safety Code, § 11378.5). The complaint further alleged that defendant’s 1985 first degree burglary conviction constituted a strike under our Three Strikes Law (§§ 667, subds. (b)-(d), 1170.12, subds. (b)-(j)) and that he had ten other felony convictions that rendered him ineligible for probation.²

One week later, defendant and two other defendants appeared in court. Immediately after off-the-record discussions, defendant pled guilty to the sole charge against him and admitted the prior strike allegation. The prosecutor conducted the plea colloquy. The prosecutor started by informing defendant that he faced a maximum sentence of 16 years in state prison,

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

² The complaint also alleged that defendant’s two prior drug convictions warranted sentencing enhancements under Health and Safety Code section 11370.2, but our Legislature subsequently amended that section in a manner that rendered it inapplicable to defendant’s prior convictions.

but explained that he would be sentenced to a low-term of three years (with that time to be served either in state prison or county jail, depending on whether defendant's "strike" conviction was valid). As part of the plea colloquy, defendant's attorney "concur[red] in the plea, join[ed] in [defendant's] waivers [of his constitutional rights attendant to the plea], and stipulate[d] to a factual basis for the plea." The trial court then accepted the plea. The plea transcript is silent as to how the three-year sentence to be imposed was fixed, but the minute order from the plea hearing stated that defendant "enter[ed] into an open plea with the court, over the People's objection."

In January 2018, the trial court sentenced defendant to three years in state prison and dismissed the "strike" allegation. Defendant filed this timely appeal.

DISCUSSION

A "conditional plea" is valid only if the trial court taking the plea finds, among other things, a "prima facie factual basis for the charge[(s)]" to which the defendant is pleading guilty or no contest. (§ 1192.5; *Holmes, supra*, 32 Cal.4th at pp. 438, 441; *People v. Hoffard* (1995) 10 Cal.4th 1170, 1181 (*Hoffard*).) The factual basis for a charge is a description of the defendant's "conduct that g[i]ve[s] rise to th[at] charge." (*Holmes*, at p. 436.) A court may establish a factual basis for a plea in a number of ways: (1) the defendant can personally describe his conduct in his own words (*Holmes*, at p. 436); (2) the defendant can tell the court that he discussed the elements of the crime with his counsel and was satisfied with his counsel's advice (*People v. Palmer* (2013) 58 Cal.4th 110, 118); or (3) defense counsel can stipulate that a factual basis exists as long as the stipulation refers to a "particular document" that sets forth the defendant's conduct

(*People v. French* (2008) 43 Cal.4th 36, 50-51). However, a bare stipulation by counsel that a factual basis exists is insufficient if it does not reference a document setting forth the defendant's conduct. (*People v. Willard* (2007) 154 Cal.App.4th 1329, 1334-1335.)

The above described judicial duty to assure that a plea has a factual basis applies only to "conditional" pleas—that is, pleas that "arise from a negotiated resolution of the charges." (*Hoffard, supra*, 10 Cal.4th at pp. 1181, 1184; *People v. Marlin* (2004) 124 Cal.App.4th 559, 571.) The duty is limited to conditional pleas because "negotiated plea[s]"—unlike unnegotiated, so-called "open pleas"—"create[] an especially high risk [a] defendant will plead to a crime he or she did not commit" in order to obtain a "substantially reduced punishment." (*Hoffard*, at p. 1182; *People v. Watts* (1977) 67 Cal.App.3d 173, 178.)

Defendant argues that his plea is invalid because (1) his plea was conditional, and (2) the trial court found a factual basis for his plea based solely on defense counsel's stipulation to a factual basis that did not incorporate any document describing his conduct. We review a trial court's finding of a factual basis for a plea for an abuse of discretion. (*Holmes, supra*, 32 Cal.4th at p. 443.)

The trial court did not abuse its discretion in accepting defendant's plea because defendant has not established the first premise of his argument—namely, that his plea was conditional. As noted above, section 1192.5's factual basis requirement does not apply when a defendant enters an open plea by "unconditionally[] admitting all the charges' [citation]" without "any promises." (*People v. Cuevas* (2008) 44 Cal.4th 374, 381, fn. 4; *Hoffard, supra*, 10 Cal.4th at p. 1184.) A plea is still an "open

plea” even if the trial court gives an “indicated sentence”—that is, if the court tells the defendant what sentence the court would impose whether or not the defendant goes to trial and the defendant enters a plea to all charges and admits all allegations—because such an indicated sentence is not conditioned upon the entry of the defendant’s plea. (*People v. Clancey* (2013) 56 Cal.4th 562, 575-576 (*Clancey*).) Here, the minute order expressly records that defendant entered an “open plea” over the People’s objection, and the transcript of the plea colloquy is consistent with the court accepting an open plea after sharing with the defendant and his counsel, in an off-the-record conversation, an “indicated sentence” of three years.

Defendant responds that his plea was conditional, and that the minute order’s report of an “open plea” over the People’s objection is inaccurate. For support of his position, defendant cites (1) the prosecutor’s indication that defendant would be receiving a three year sentence if he entered a plea, (2) the prosecutor’s request, as part of the plea colloquy, that defendant stipulate to a factual basis (which would have been unnecessary if the plea were truly an “open plea”), and (3) the absence of an on-the-record objection to defendant’s plea by the prosecutor. It is more likely, defendant asserts, that the minute order’s indication of an “open plea” refers to one of the other two defendants who entered pleas during the same colloquy. Because the transcripts control over written orders in criminal cases (*People v. Mesa* (1975) 14 Cal.3d 466, 471), defendant concludes, we must reject the erroneous minute order in favor of the plea transcript that implies his plea was conditional.

We reject defendant’s argument. A court’s oral pronouncements control over its minute orders only when there is

a conflict (*Mesa, supra*, 14 Cal.3d at p. 471), and here there is not. The prosecutor's advisement that defendant would be sentenced to three years is consistent with the trial court sharing an indicated sentence of three years; a defendant's plea to an indicated sentence is, as noted above, an unconditional plea. To the extent defendant invites us to infer that the trial court had *promised* defendant three years in exchange for his plea, we decline that invitation because it requires us to infer that the trial court violated binding Supreme Court precedent that precludes such judicial negotiation (*Clancey, supra*, at 56 Cal.4th at p. 575; *People v. Stowell* (2003) 31 Cal.4th 1107, 1114 ["a trial court is presumed to have been aware of and followed the applicable law."]; Evid. Code, § 664) and because it ignores that defendant pled guilty to the sole charged count *and* admitted the strike allegation (which would be required for an open plea, but which would make no sense for a negotiated plea that contemplated the dismissal of the strike allegation). The prosecutor's request that defense counsel stipulate to a factual basis also does not indicate that the plea was conditional; the prosecutor's decision to take a "belt and suspenders" approach by requiring more than was necessary does not alter the underlying nature of the plea. And the absence of the prosecutor's objection (or, for that matter, the court's recitation that it was making an indicated sentence) in the reporter's transcript does not cut either way because informal, off-the-record discussions regarding the disposition of a case are commonplace and permissible in criminal cases. (*People v. James* (1989) 208 Cal.App.3d 1155, 1169; *People v. West* (1970) 3 Cal.3d 595, 610.) We agree with defendant that the plea transcript could have been clearer as to whether defendant's plea was conditional or unconditional, but

defendant has not carried his burden as the appellant in showing that the transcript is inconsistent with the very clear statement in the minute order that defendant's plea was open and unconditional. Consequently, no inquiry into factual basis was required and any shortcomings in that inquiry do not call into question the validity of defendant's plea.

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ