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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. SHADRICK GRANT, Defendant and Appellant.	B280626 (Los Angeles County Super. Ct. No. MA067609)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Appeal dismissed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald E. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Shadrick Grant appeals from a judgment entered after he was convicted by a jury of assault with a deadly weapon and domestic violence on a former girlfriend. The jury was unable to reach a verdict on one count of attempted murder. As part of a negotiated plea, Grant admitted he suffered a prior serious or violent felony conviction and two prior prison sentences. The trial court dismissed the attempted murder charge. The trial court sentenced Grant to an aggregate prison term of 19 years. Grant contends on appeal the trial court erred in selecting the upper terms for his sentence on the domestic violence count and the great bodily injury enhancement. Grant also asserts ineffective assistance of counsel. Because Grant waived his right to appeal his sentence as part of the negotiated plea, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Information*

The information alleged Grant committed the crimes of attempted murder (Pen. Code, §§ 664/187, subd. (a);[1] count 1); assault with a deadly weapon (§ 245, subd. (a)(1); count 2); and domestic violence on a former girlfriend (§ 273.5, subd. (a); count 3). The information alleged as to counts 1 and 3 that in the commission of the offense, Grant personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). The information also alleged as to counts 1, 2, and 3 that in the commission of the offense, Grant personally inflicted great bodily injury on his former girlfriend (§ 12022.7, subd. (e)). The information further alleged Grant suffered a prior conviction of robbery, which

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[1] All statutory references are to the Penal Code.

constituted a strike within the meaning of the three strikes law (§§ 667, subds. (a)(1), (b)-(j), 1170.12), and suffered two prior convictions for which he served separate prison terms (§ 667.5, subd. (b)).

Grant pleaded not guilty and denied the special allegations.

B. *The Bifurcated Trial and Verdict*

The trial court bifurcated the trial on the alleged prior convictions. While the jury was deliberating on the underlying charges, Grant waived his right to a jury trial on the alleged prior convictions.

The jury found Grant guilty on counts 2 and 3 but was unable to reach a verdict on count 1. The jury was hung with nine of the jurors voting in favor of guilt. The jury found true the allegations of great bodily injury and use of a deadly or dangerous weapon.

C. *Grant's Plea and Waivers of His Right To Appeal*

On the date set for a retrial on count 1, the trial court discussed the People's proposed plea agreement with Grant, stating:

"My understanding is that the prosecutor is willing to forego retrial on Count No. 1 and just have me sentence you on Counts 2 and 3 and those allegations, if you are willing to admit the prior convictions alleged against you and also if you are willing to waive your appellate rights as to the two counts you were convicted of."

The trial court also discussed with Grant the advantages of Grant accepting the proposed plea agreement, including that his maximum sentence would be 16 years, instead of a possible life

sentence if he was found guilty after a retrial of the attempted murder charge. Specifically, the court stated, "I want to make sure that you've discussed this fully with your attorney, because if you go forward and if 12 jurors, as opposed to nine, are convinced this time that the prosecution has proven count 1 to the standard of beyond a reasonable doubt, life in prison is a whole lot different than 16 years and being eligible for parole." The court stated further that even if a jury returned a not guilty verdict in a retrial on count 1, Grant faced "16 years on what [he is] already convicted of." Grant responded, "I'm 50 years old. If I got to 15 years, my life [is] going to be over anyway."

The trial court took a recess so Grant could speak with his attorney about the offer. Following the recess, Grant's attorney indicated Grant wished to accept the offer. The trial court stated it would hold a sentencing hearing at a future date and advised Grant of his rights:

"As I indicated earlier, the prosecution is willing to dismiss count 1 under penal code section 1385, which means they're dismissing it in the interests of justice, if you will agree to waive your right to appeal in case MA067609. [¶] In that case, because you were convicted by jury, you would normally have the right to appeal to the appellate court your conviction of the counts in that case."

The trial court then inquired:

Court: "Do you understand your right to appeal from your conviction in the case ending in 609?

Grant: "Yes, Your Honor."

Court: "At this time, sir, *do you give up your right to appeal from your conviction and sentence* in the case ending in 609?"

Grant: "Yes."

Court: "Counsel, do you join in the waiver of the appellate right?"

Defense counsel: "Yes." (Italics added.)

As part of the plea agreement, the trial court granted the People's motion to dismiss count 1. Grant waived his right to a trial on the prior conviction allegations and admitted he suffered a prior strike conviction and had served two separate prior prison terms for prior felony convictions, within the meaning of section 667.5, subdivision (b). The trial court found Grant made a knowing, intelligent, and voluntary waiver of his rights.

D. *The Sentencing*

At the sentencing hearing, the prosecutor informed the trial court that he had previously miscalculated the maximum sentence at 16 years, instead of 21 years. The trial court sentenced Grant to an aggregate state prison term of 19 years. The court selected count 3 for domestic violence as the base term and sentenced Grant to the upper term of four years, doubled under the three strikes law, plus one year for use of a deadly or dangerous weapon, the upper term of five years for inflicting great bodily injury, and five years for the prior conviction for a serious felony under section 667, subdivision (a). The trial court imposed and stayed an 18-year term on count 2, pursuant to section 654, and exercised its discretion to strike the allegations that Grant served two prior prison terms.

DISCUSSION

A. *Grant Waived His Right To Appeal His Sentence*

Grant contends the trial court abused its discretion in selecting the upper term sentence on count 3 by relying on inapplicable aggravating factors. Grant acknowledges that as part of his negotiated plea he waived his appellate rights, but urges us to consider the merits of his appeal, citing to *People v. Panizzon* (1996) 13 Cal.4th 68 (*Panizzon*) for the proposition that a defendant's general waiver of the right to appeal does not bar an appeal of sentencing errors occurring after the plea. However, because Grant specifically waived his right to appeal the sentence, this contention lacks merit.

Just as a defendant may waive important constitutional rights in a negotiated plea agreement, "so also may a defendant waive the right to appeal as part of the agreement." (*Panizzon*, *supra*, 13 Cal.4th at pp. 79-80; accord, *People v. Buttram* (2003) 30 Cal.4th 773, 791 (*Buttram*) ["it is well settled that a plea bargain may include a waiver of the right to appeal"].) To be enforceable, the waiver of the right to appeal must be knowing, intelligent, and voluntary. (*Buttram*, at p. 791; *Panizzon*, at p. 80.)

When a defendant enters a plea "in exchange for specified benefits such as the dismissal of other counts . . . both parties . . . must abide by the terms of the agreement." (*People v. Segura* (2008) 44 Cal.4th 921, 930-931; *People v. Walker* (1991) 54 Cal.3d 1013, 1024 (*Walker*), overruled on other grounds in *People v. Villalobos* (2012) 54 Cal.4th 177; accord, *People v. Lettice* (2013) 221 Cal.App.4th 139, 153, fn. 15.)

The Supreme Court in *Panizzon* addressed whether a defendant could appeal his sentence imposed after a negotiated plea as part of which he agreed not to challenge the sentence on appeal. The court concluded the defendant could not appeal his sentence because he failed to obtain a certificate of probable cause under section 1237.5, which was required because the defendant, by challenging the negotiated sentence, was in substance attacking the validity of the plea.[2] (*Panizzon, supra*, 13 Cal.4th at p. 78.) The court held as an alternate ground that even if the defendant was properly challenging the sentence without a certificate of probable cause, his appeal was barred because he specifically waived his right to appeal the bargained sentence. (*Id*. at pp. 85-86.)

The *Panizzon* court distinguished a general waiver of a right to appeal, which would "not be construed to bar the appeal of sentencing errors occurring subsequent to the plea," from the defendant's waiver of his right to appeal where the plea specifically set forth the sentence he would receive. (*Panizzon*, *supra*, 13 Cal.4th at pp. 85-86.) The court described a "general waiver" as "a waiver that is nonspecific, e.g., 'I waive my appeal

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[2] Section 1237.5 provides that a defendant may not appeal from a judgment of conviction upon a plea of guilty or no contest unless he or she obtains a certificate of probable cause from the trial court, with limited exceptions. However, the Supreme Court in *People v. Maultsby* (2012) 53 Cal.4th 296 held that the probable cause requirement under section 1237.5 only applies to a plea of guilty or no contest to the substantive charge, not to admission of an enhancement allegation. (*Id*. at pp. 302-303.) Thus, the question here is not whether Grant was required to obtain a certificate of probable cause, but whether he waived his right to appeal the sentence as part of the negotiated plea.

rights' or 'I waive my right to appeal any ruling in this case.'" (*Id.* at p. 85, fn. 11.)

The Supreme Court again considered whether a defendant had waived his right to appeal the sentence in *Buttram*, in which the defendant agreed to a maximum sentence, but not to a specific sentence within the maximum, and did not expressly waive his right to appeal. (*Buttram*, *supra*, 30 Cal.4th at pp. 778, 787.) Although the *Buttram* court considered the issue in the context of section 1237.5, the court concluded that "absent contrary provisions in the plea agreement itself," a certificate of probable cause was not required for a defendant to challenge the trial court's exercise of sentencing discretion where the negotiated plea was to an agreed upon maximum sentence. (*Id.* at pp. 790-791.) As Justice Baxter explained in his concurring opinion, the sentence was appealable because the defendant's "plea [was] silent on the appealability of the trial court's sentencing choice." (*Id.* at p. 791 (conc. opn. of Baxter, J.).) Justice Baxter noted, as applicable here, that even if the defendant had obtained a certificate of probable cause, if the negotiated plea included an express waiver of appeal, this "would permit the appellate court to decline to address the defendant's claim on the merits, assuming that after de novo review, it found the waiver knowing, voluntary, and intelligent." (*Id.* at p. 793.)[3]

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[3] Grant also relies on *People v. Mumm* (2002) 98 Cal.App.4th 812, 815, in which the defendant pleaded guilty and agreed to waive "'issues regarding priors allegations.'" At the time of the defendant's waiver and plea, the trial court had not yet determined whether his prior Arizona conviction would constitute a strike within the meaning of the three strikes law. The Court of Appeal declined to dismiss the appeal, treating the waiver as a "general waiver of appeal rights," and concluded that because the

Although Grant did not agree to a specific prison term as part of his negotiated plea, he agreed to give up his "right to appeal from [his] conviction and sentence." Thus, similar to the defendant in *Panizzon*, Grant made a specific waiver of his right to appeal the sentence. The waiver here is different from the general waiver described by the *Panizzon* court of one where the defendant states, "'I waive my appeal rights'" or "'I waive my right to appeal any ruling in this case.'" (*Panizzon*, *supra*, 13 Cal.4th at p. 85, fn. 11.) The facts of this case also differ from *Buttram*, in which the negotiated plea was silent as to whether the defendant could appeal the sentence.

B. *Grant Waived Any Challenge to the Negotiated Plea*

Grant contends he should be allowed to appeal his sentence because the trial court incorrectly advised him that his maximum sentence was 16 years instead of 21 years. We disagree.

It is well established that a trial court must advise a criminal defendant of the "direct consequences" of the defendant's negotiated plea prior to accepting it. (*People v. Dillard* (2017) 8 Cal.App.5th 657, 664; accord, *People v. Zaidi* (2007) 147

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trial court had not yet resolved whether the Arizona prior constituted a strike at the time the defendant entered his plea, it fell outside the waiver as "'"possible future error" [that was] outside the defendant's contemplation and knowledge at the time the waiver is made.'" (*Id.* at p. 815, citing *Panizzon*, *supra*, 13 Cal.4th at p. 85.) Although the trial court here at the time of Grant's plea had not yet decided on the specific sentence it would impose, Grant specifically agreed to waive his right to appeal the sentence. Thus, *Mumm*'s consideration of the appealability of future error in the context of a general appellate waiver does not apply.

Cal.App.4th 1470, 1482.) Direct consequences include any increased sentence that might be imposed when a defendant admits a prior criminal conviction. (*People v. Cross* (2015) 61 Cal.4th 164, 170-171; *People v. Jones* (2009) 178 Cal.App.4th 853, 858.)

Here, Grant argues the trial court inaccurately described the consequences of his plea by advising him that his sentence would be 16 years. This requirement, however, is not constitutionally mandated, but rather, is "a judicially mandated rule of criminal procedure." (*People v. Dillard*, *supra*, 8 Cal.App.5th at p. 664; *Walker*, *supra*, 54 Cal.3d at p. 1023.) Because the trial court's advisements are not constitutionally mandated, a criminal defendant's ability to challenge the validity of his plea[4] on the basis that he was not properly advised is limited. (See *Walker*, at p. 1022.)

First, any error in the advisement is waived absent a timely objection. (*Walker*, *supra*, 54 Cal.3d at pp. 1022-1023; *People v. Jones*, *supra*, 178 Cal.App.4th at p. 858 ["'Consequently, when the only error is a failure to advise of the penal consequences, the error is waived if not raised at or before sentencing.'"].) The purpose of the general waiver doctrine is to encourage defendants to bring errors to the attention of the trial courts, where such errors can be easily remedied. (*Walker*, at

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[4] Grant does not contend his plea was not knowing, voluntary, and intelligent, nor does he seek to withdraw his plea. In any event, the trial court advised Grant of his right to a jury trial, right to confront and cross-examine witnesses, and right against self-incrimination prior to accepting his plea. Thus, as found by the trial court, his plea was knowing, voluntary, and intelligent. (*People v. Farwell* (2018) 5 Cal.5th 295, 299-300, citing *Boykin v. Alabama* (1969) 395 U.S. 238, 243.)

p. 1023.) At the time the trial court acknowledged that the maximum sentence was 21 years, Grant could have objected to imposition of a sentence greater than the 16-year maximum the trial court had referenced at the time of Grant's plea, but he did not. Had Grant objected, the trial court could have entertained a motion by Grant to withdraw his plea, but no motion was made, even after the trial court sentenced Grant to 19 years instead of the stated 16-year sentence.[5]

Second, even if Grant did not waive this issue, to successfully challenge the validity of a guilty plea, he must demonstrate prejudice; specifically, that it was reasonably probable he would not have entered the plea had he been properly advised. (*Walker*, *supra*, 54 Cal.3d at pp. 1022-1023.) Grant does not argue that he would have rejected the plea and instead proceeded to trial on the attempted murder charge had he known his correct maximum sentence. To the contrary, as he stated in his response to the trial court's statements about his maximum exposure, "If I got to 15 years, my life [is] going to be over anyway." Grant does not state that had he known he could face 21 years in prison, he would not have admitted the prior convictions and waived his appellate rights. Instead, he argues he should be allowed to enforce the negotiated plea for dismissal

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[5] Grant does not contend on appeal that his attorney was ineffective for failing to raise the trial court's incorrect advisements as to his maximum sentence. Instead, Grant contents his counsel was ineffective in failing to object to the trial court's use of improper aggravating factors. Because we hold Grant waived his right to appeal his sentence, we do not reach whether the trial court abused its discretion in sentencing Grant to 19 years in state prison, nor do we reach whether his counsel was ineffective for failing to object to his sentence.

of the attempted murder charge, but be relieved from his agreement not to appeal the sentence. He cannot have it both ways. (See *id*. at p. 1024 ["both parties . . . must abide by the terms of the agreement"].)

Because Grant waived his right to appeal the sentence as part of his negotiated plea, we do not reach the merits of his challenge to the sentence, and instead dismiss his appeal.

DISPOSITION

The appeal is dismissed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.