Filed 6/20/18 P. v. Solano CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ALBERT SOLANO, SR., Defendant and Appellant.	2d Crim. No. B281707 (Super. Ct. No. 2014014749) (Ventura County)

Albert Solano, Sr., pled guilty to two counts of first degree residential burglary with a nonaccomplice present (Pen. Code,[1] §§ 459, 667.5, subd. (c)(21)), eight counts of theft from an elder (§ 368, subd. (d)), three counts of insurance fraud (§ 550, subd. (b)(2)), 16 counts of filing a false or forged instrument (§ 115, subd. (a)), one count of grand theft (§ 487), and one count of attempted grand theft (§§ 664/487). The trial court sentenced him to 10 years in state prison. Solano contends the court erred

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

when it denied his: (1) fourth *Marsden*[2] motion and request to withdraw his plea, (2) two *Faretta*[3] motions, and (3) motion to substitute private counsel. We affirm.

FACTUAL AND PROCEDURAL HISTORY

The prosecution charged Solano with 70 financial crimes and related burglaries. Solano made his first *Marsden* motion at an early disposition conference. The trial court scheduled a hearing on the motion for later that month.

At the hearing, Solano complained that his public defender, Barbara Lewis, did not move to reduce his bail and did not review materials his previously retained private counsel, Raymond Garcia, had given her. Lewis explained to the trial court that another judge had already denied Solano's bail reduction request and that she was reviewing the materials Garcia provided. The court denied Solano's first *Marsden* motion.

On the morning of the preliminary hearing, Lewis announced she was ready to proceed. Solano made a second *Marsden* motion and said he wanted to retain Garcia again. The court held a combined hearing on the *Marsden* motion and motion to substitute retained counsel that day.

Solano professed his innocence at the hearing, claimed that Lewis had not reviewed the materials Garcia had given her, and said he made "a big mistake" when he released Garcia. He said that his daughter would be in contact with Garcia soon and that his mother would be sending the funds to pay him. He requested that the court continue the preliminary hearing so Garcia could substitute in.

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[2] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

[3] *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

Lewis replied that she was working to review the documents. She had spoken with several private attorneys, all of whom said they did not want to represent Solano. She believed that Solano's motion was a stalling tactic.

Finding no evidence of inadequate representation or an irreconcilable conflict, the trial court denied Solano's second *Marsden* motion. It also denied Solano's motion to retain private counsel as untimely, given that 30 witnesses had been subpoenaed and were ready to testify. The court told Solano he would have "plenty of time" to hire Garcia after the preliminary hearing.

At his arraignment on the information, Solano moved to represent himself. The trial court said Solano should discuss the matter with Lewis and fill out a form for self-representation. It denied Solano's first *Faretta* motion without prejudice, and set a hearing on the motion for later that month.

The trial court held three more hearings on Solano's case that month, and four the next. Solano did not raise his *Faretta* motion at any of the hearings.

At the beginning of jury voir dire, Solano made a third *Marsden* motion. The trial court told Solano his motion was untimely but that he was entitled to a hearing. At a hearing that afternoon, Solano claimed that he and Lewis disagreed on how to proceed with the case, that Lewis was not acting in his best interests, and that Lewis was not trying hard enough. Lewis then detailed her work on the case. Finding neither inadequate representation nor a breakdown between Solano and Lewis, the court denied the third *Marsden* motion.

When jury selection recommenced later that month, the prosecutor told the trial court she had offered to recommend a

10-year sentence in exchange for Solano's guilty plea. In court the next day, Solano appeared ambivalent about the proposed plea. He said he felt overwhelmed, was on medication, and was not thinking clearly. He also said he was confused about the credit calculation and that he would be serving time in state prison rather than released on probation.

Solano nevertheless pled guilty to nine charges. When asked about the tenth, Solano claimed he "didn't do anything." Lewis told him he could not start arguing if he wanted to plead guilty.

Solano then pled guilty to two more charges. When asked about the next, Solano claimed that he did not know any of the victims listed and that he was taking the blame for things he did not do. Lewis again explained that Solano could not argue about the charges, that he simply had to say "yes" or "no" to each.

Solano pled to four more charges, but refused to plead to the next two. Lewis reiterated the plea process was not a "mini trial." Solano said, "Do you understand that I'm on drugs right now? I can't even think correctly. [¶] . . . [¶] Do you understand I got some pills this morning?" He said he understood the prosecutor's offer, but wanted to go to trial.

The prosecutor announced her intent to revoke the offer. The trial court asked Solano if he wanted to reject the offer and proceed to trial instead. Solano replied, "I'm not even thinking clearly. [¶] . . . [¶] I'm not guilty. Do you understand that? I'm not guilty. I didn't do no fraud." He then pled guilty to nine more charges. When he refused to plead to any others and reiterated his desire to go to trial, the court ordered a recess.

After the recess, the trial court asked Lewis if she wanted to declare a doubt as to Solano's mental state. Lewis

replied that Solano was responsive to the court's questions, appeared to understand the proceedings, and was competent to stand trial. When Solano said that he was not competent, the court asked him if he understood what was happening. Solano said that he did and that he understood the roles of the attorneys. He then made a second *Faretta* motion. The court advised him that that was a separate issue and continued to inquire about his competency. Lewis asked what medication he had taken. The bailiff said she had spoken with the nurse, who said that Solano had taken three aspirin and one antidepressant that did not cause confusion. Solano said he had also taken a sleeping pill the night before.

The trial court then addressed Solano's *Faretta* motion. The court found the motion untimely because the case was "in the midst of jury selection." It considered "the quality of the representation that [Solano] ha[d]" had so far, his claim that he did not trust Lewis, and his "ongoing problem with abiding by the rules and procedures and courtroom protocol." The court also noted that Solano was not prepared to go forward with trial immediately. It denied Solano's second *Faretta* motion, deeming Lewis's representation "exemplary" to date.

At a proceeding that afternoon, Solano told the trial court that he felt much better. He asked the court for a short recess to look over the plea offer again. After the recess, Solano pled guilty to all 31 charges in the proffered plea.

The next month, Lewis informed the trial court that Solano wanted to withdraw his plea. She said she had researched the merits of Solano's request and declined to join it. Solano requested a fourth *Marsden* hearing, which the court set for the following day.

At the hearing, Solano said that Lewis disregarded his request to ask Garcia questions and did not ask enough questions at the preliminary hearing. He said Lewis lied to him when she told him his maximum exposure was over 60 years in prison; he claimed the magistrate at the preliminary hearing said it was three and a half. Solano again said that he was innocent of all the charges against him. He said Lewis intimidated him into taking the plea by using the "f-word."

Lewis replied that she had spent weeks working on Solano's case. She read through all the materials Garcia gave her, provided Solano with portions of redacted discovery, and discussed possible defenses with him. She did not ask certain questions at the preliminary hearing because the responses could have elicited damaging information. She did not use the word "fuck" when discussing the plea with Solano. He had told the probation officer that he accepted the plea because he was intimidated by the prosecutor, not her.

The trial court denied Solano's fourth *Marsden* motion. The court noted it had observed Solano on several occasions, and saw how well Lewis represented him. It appeared to the court that Solano had simply changed his mind on the plea.

The trial court then confirmed that Lewis would not move to withdraw Solano's guilty plea. The next day, it sentenced Solano to the stipulated term of 10 years in prison.

DISCUSSION

The fourth Marsden *motion*

Solano contends the trial court erred when it denied his fourth *Marsden* motion. We disagree.

A defendant has "no absolute right to substitute [appointed] counsel." (*People v. Gutierrez* (2009) 45 Cal.4th 789,

803 (*Gutierrez*); see *Marsden*, *supra*, 2 Cal.3d at p. 123.) But the trial court must permit the defendant to do so if there is an "irreconcilable conflict" with counsel or if counsel is not providing adequate representation. (*Gutierrez*, at p. 803.) To determine whether these grounds exist, the court should permit the defendant to "state any grounds for dissatisfaction with the current appointed attorney." (*People v. Sanchez* (2011) 53 Cal.4th 80, 90 (*Sanchez*).) Counsel then has "the opportunity to address the defendant's concerns . . . and to explain [their] performance." (*People v. Horton* (1995) 11 Cal.4th 1068, 1123.) If a credibility question arises during the hearing, the court may accept either the defendant's assertions or counsel's representations. (*People v. Myles* (2012) 53 Cal.4th 1181, 1207 (*Myles*).) "[T]he [court's] inquiry [during the hearing] is forward-looking in the sense that counsel would be substituted in order to provide [adequate representation] in the future." (*Sanchez*, at p. 88, italics omitted.) "But [its] decision must always be based on what has happened in the past." (*Ibid.*, italics omitted.)

We review the trial court's denial of a *Marsden* motion for abuse of discretion. (*Gutierrez*, *supra*, 45 Cal.4th at p. 803.) We will not find that the court abused its discretion unless the record shows that the defendant and counsel had such an irreconcilable conflict that inadequate representation was likely to result. (*People v. Smith* (1993) 6 Cal.4th 684, 696 (*Smith*).)

There was no abuse of discretion here. Solano first claims Lewis provided inadequate representation because she did not review materials that established his factual innocence, and thus pressured him to take a guilty plea. But Lewis said she did review those materials. The trial court was permitted to accept her representations over Solano's (*Myles*, *supra*, 53 Cal.4th at p.

1207), and was not required to appoint new counsel to determine if the materials established a basis for a motion to withdraw a plea, as Solano maintains (*Sanchez*, *supra*, 53 Cal.4th at p. 90).

Solano next claims he and Lewis had a "complete breakdown" in their relationship. But the trial court was permitted to accept Lewis's rebuttal of Solano's claims that she swore at him, pressured him into taking the plea, and lied to him. (*Myles*, *supra*, 53 Cal.4th at p. 1207.) And even if Lewis had used "heated words" with Solano, that is insufficient to show an irreconcilable conflict. (*Smith*, *supra*, 6 Cal.4th at p. 696.) So, too, is his alleged lack of trust in Lewis's evaluation of the merits of the motion to withdraw a plea: "If a defendant's claimed lack of trust in . . . an appointed attorney were sufficient to compel appointment of substitute counsel, defendants effectively would have a veto power over any appointment, and by a process of elimination could obtain appointment of their preferred attorneys." (*People v. Jones* (2003) 29 Cal.4th 1229, 1246.) That is "certainly not the law." (*Ibid.*)

Next, Solano claims Lewis waived claims related to the denials of his *Faretta* motions and his motion to substitute retained counsel when she refused to move to withdraw his plea, and thus provided inadequate representation. But a trial court's denial of a *Faretta* motion or motion to substitute retained counsel is reviewable on appeal following a guilty plea. (*People v. Marlow* (2004) 34 Cal.4th 131, 146-147.) Lewis's refusal to move to withdraw the plea did not deprive Solano of raising these issues here.

Solano next claims the trial court should have granted his *Marsden* motion because Lewis provided inadequate representation when she ignored evidence his plea was not

knowing and voluntary: He was under the influence of medication, struggled with the plea form, and vacillated between claims of innocence and willingness to plead. We read the record differently. (See *People v. Panizzon* (1996) 13 Cal.4th 68, 80 (*Panizzon*) [appellate court reviews record de novo to determine if plea is knowing and voluntary].) While that may fairly describe what happened on the morning Solano started the plea process, it does not accurately reflect what occurred the afternoon he pled.

After the noon recess, Solano told the trial court he was feeling better. He reviewed the proffered plea and told the court he wanted to accept it. He initialed the entirety of the plea form, and told the court he had read and discussed the offer with Lewis. He stipulated to the factual basis for the plea. He confirmed he understood the consequences of accepting the plea. (See § 1016.5, subd. (a) [immigration consequences]; *People v. Villalobos* (2012) 54 Cal.4th 177, 181-182 [restitution]; *In re Moser* (1993) 6 Cal.4th 342, 352 [parole consequences]; *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605 [range of punishment].) He confirmed he understood he was giving up his constitutional rights to a jury trial and to confront witnesses, and his privilege against self-incrimination. (See *Boykin v. Alabama* (1969) 395 U.S. 238, 243-244 (*Boykin*); *In re Tahl* (1969) 1 Cal.3d 122, 130-133 (*Tahl*).) And he confirmed he understood he was giving up his right to appeal. (See *Panizzon*, *supra*, 13 Cal.4th at p. 80.)

Solano also stated he was "entering [his] plea and admission freely and voluntarily and not as a result of any force, pressure[,] or threats of violence to [him] or [his] family." He then replied exclusively "yeah" or "yes" when the prosecutor asked him if he pled guilty to 31 different crimes. The totality of the circumstances shows that Solano's plea was knowing and

voluntary. (*People v. Howard* (1992) 1 Cal.4th 1132, 1175; see *People v. Gandy* (2017) 13 Cal.App.5th 1288, 1299 [plea valid where defendant signed form advising him of *Boykin*/*Tahl* rights, counsel confirmed plea was knowing and intelligent, and defendant confirmed he had read and discussed form with counsel].) As such, Lewis did not perform inadequately when she declined to move to withdraw it. (*Gutierrez*, *supra*, 45 Cal.4th at pp. 804-805 [counsel not required to make meritless motions]; see *People v. Brown* (2009) 175 Cal.App.4th 1469, 1472-1473 [meritless motion to withdraw plea].) And because the record demonstrates that Solano's plea was knowing and voluntary, we reject his related contention that we should remand the case to afford him the opportunity to move to withdraw it. (Cf. *People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416 [to establish good cause to withdraw a plea, defendant must show, by clear and convincing evidence, that they: (1) "operat[ed] under mistake, ignorance, or any other factor overcoming the exercise of . . . free judgment, including inadvertence, fraud, or duress" and (2) "would not have accepted the plea bargain had it not been for the mistake"].)

Finally, Solano claims the trial court did not focus on the correct issue when it denied his fourth *Marsden* motion (see *People v. Davis* (1984) 161 Cal.App.3d 796, 802-803 [court abuses its discretion if it conducts incorrect legal analysis]): Rather than focusing on whether Lewis could adequately represent him in the future by properly evaluating his motion to withdraw the plea, the court considered whether she adequately represented him when he pled. But Solano cites the record selectively. The court did state that Lewis "ha[d] competently represented him" during the plea process, but it added that she "[would] continue to do so

through the sentencing." And even if it had not specified that its analysis was prospective, it was permissible for the court to base its decision "on what ha[d] happened in the past." (*Sanchez*, *supra*, 53 Cal.4th at p. 88, italics omitted.) The court did not apply an incorrect legal standard when it denied Solano's motion.

The two Faretta *motions*

A defendant has a constitutional right to self-representation. (*Faretta*, *supra*, 422 U.S. at p. 819.) The trial court must grant a request for self-representation if the request is made: (1) knowingly and intelligently, (2) unequivocally, and (3) within a reasonable time prior to trial. (*People v. Stanley* (2006) 39 Cal.4th 913, 931-932 (*Stanley*).) We independently examine the entire record to determine whether a defendant has invoked the right to self-representation. (*Id.* at p. 932.)

1. Solano's first Faretta *motion*

Solano contends the trial court erred when it denied without prejudice his first *Faretta* motion at arraignment and did not address it again. We conclude that Solano abandoned his motion because he did not pursue it at subsequent hearings.

"[T]he *Faretta* right, once asserted, may be waived or abandoned." (*People v. Dunkle* (2005) 36 Cal.4th 861, 909 (*Dunkle*), disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22 (*Doolin*).) Where a defendant has "both time and opportunity to follow up on [a] request for a hearing on [a] *Faretta* motion, and fail[s] to do so, [the motion] must be deemed to have [been] abandoned or withdrawn." (*People v. Kenner* (1990) 223 Cal.App.3d 56, 62 (*Kenner*).)

For example, in *Stanley*, *supra*, 39 Cal.4th at page 929, the defendant moved for self-representation prior to the preliminary hearing. The trial court denied the motion, and the

defendant thereafter accepted several court-appointed attorneys. (*Id*. at pp. 931, 933.) He never asserted his *Faretta* rights again. (*Id*. at p. 931.) Because he accepted counsel and did not renew his *Faretta* motion, our Supreme Court concluded that the defendant "ultimately abandoned" his request for self-representation. (*Id*. at p. 933; see also *Dunkle*, *supra*, 36 Cal.4th at pp. 906-910; *Kenner*, *supra*, 223 Cal.App.3d at pp. 61-62.)

A similar scenario occurred here. Solano first moved for self-representation at arraignment. The trial court denied Solano's *Faretta* motion without prejudice, and told him it would consider it again at a hearing three weeks later. Solano was subsequently present at hearings during the afternoon of his arraignment and again later that month, but did not mention his *Faretta* motion. He was silent during the hearing when the court was set to hear the motion. And he did not mention the motion during four hearings held the following month. Because he had no fewer than seven opportunities to renew his motion and did not do so, Solano abandoned his first *Faretta* motion. (*Kenner*, *supra*, 223 Cal.App.3d at p. 62.) Accordingly, even if the court erred when it did not address the motion more fully at arraignment, any error was cured by Solano's subsequent abandonment. (*Dunkle*, *supra*, 36 Cal.4th at p. 910.)

Solano counters that he was not required to renew his first *Faretta* request because the trial court conclusively denied it at arraignment. (See *People v. Dent* (2003) 30 Cal.4th 213, 218-219.) But there was no conclusive denial. At arraignment, the court denied Solano's motion *without prejudice*, and set a hearing on the motion for three weeks later. Because "there [was] no clear denial of the request to proceed pro se 'and the question of self-representation [was] left open for possible

further discussion,' [Solano's] 'failure to reassert his desire to proceed pro se' . . . 'constitute[s] a waiver of his'" motion. (*United States v. Barnes* (2d Cir. 2012) 693 F.3d 261, 272.)

2. Solano's second Faretta *motion*

Solano contends the trial court erred when it denied his second *Faretta* motion because it did not engage in the requisite inquiry. We disagree.

"[O]nce a defendant has chosen to proceed to trial represented by counsel, demands . . . that [they] be permitted to discharge [their] attorney and assume the defense [themselves] shall be addressed to the sound discretion of the court." (*People v. Windham* (1977) 19 Cal.3d 121, 128 (*Windham*).) "When such a midtrial request for self-representation is presented the trial court shall inquire sua sponte into the specific factors underlying the request . . . ." (*Ibid.*, italics omitted.) "Among other factors to be considered by the court in assessing such requests made after the commencement of trial are 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." (*Id.* at pp. 128-129.) While the court should make its inquiries explicit, "[w]here . . . the reasons for the denial of the motion are absolutely clear on the record . . . there [is] no detrimental effect on the justice system for the appellate court to draw the inferences necessarily implied by the court's ruling." (*People v. Perez* (1992) 4 Cal.App.4th 893, 905, fn. 10 (*Perez*).)

The trial court engaged in the proper inquiry here. As to the first *Windham* factor, the court considered "the quality of the representation that [Solano] ha[d]" had so far. As to the

third factor, it noted that trial was in the midst of jury selection. As to the fourth, it considered the reason for Solano's request—that he did not trust Lewis—and told him that that was the subject of a separate motion. And as to the fifth, it determined that Solano "had an ongoing problem with abiding by the rules and procedures and courtroom protocol" and that he was not prepared to go forward immediately with trial. That the court did not explicitly consider the second *Windham* factor is not fatal to its inquiry; the court was doubtless aware of Solano's proclivity to substitute counsel given his three prior *Marsden* motions, one prior motion to retain substitute counsel, and one prior *Faretta* motion. (See *Perez*, *supra*, 4 Cal.App.4th at p. 904.) The court did not abuse its discretion when it denied Solano's second *Faretta* motion. (*People v. Jenkins* (2000) 22 Cal.4th 900, 961-962 [denial of untimely *Faretta* motion proper where counsel provided adequate representation, defendant had proclivity to substitute counsel, and granting motion would disrupt orderly conduct of trial]; *People v. Barnett* (1998) 17 Cal.4th 1044, 1105-1106 (*Barnett*) [same].)

The motion to secure retained counsel

Solano contends the trial court erred when it denied his pre-preliminary hearing request to replace appointed counsel with private counsel. We disagree.

A defendant has a Sixth Amendment right to "be defended by the counsel . . . believe[d] to be the best." (*United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 146.) This right should "be respected wherever feasible." (*Maxwell v. Superior Court* (1982) 30 Cal.3d 606, 615, disapproved on another ground by *Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22.) It is not absolute, however, and may give way to "other values of substantial

importance" (*People v. Crovedi* (1966) 65 Cal.2d 199, 206-207 (*Crovedi*)), such as "when it will result in . . . a disruption of the orderly processes of justice" (*id.* at p. 208).

When a defendant requests a continuance to substitute counsel, a trial court is "required to 'make all reasonable efforts to ensure that [the] defendant . . . can be represented by that attorney.' [Citation.]" (*People v. Courts* (1985) 37 Cal.3d 784, 790.) "Limitations on the right to continuances in this context are . . . circumscribed." (*Ibid.*) The court nevertheless has discretion to deny a continuance "if the accused is 'unjustifiably dilatory' in obtaining counsel" (*id.* at pp. 790-791) or if "participation by a particular private attorney [is] still quite speculative at the time the motion for continuance [is] made" (*id.* at p. 791, fn. 3). Before doing so, it should "'"consider not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on other witnesses, jurors[,] and the court[,] and, above all, whether substantial justice will be accomplished or defeated by a granting of the motion."' [Citations.]" (*Barnett*, *supra*, 17 Cal.4th at p. 1126.) We review for abuse of discretion. (*Courts*, at p. 789.)

The trial court did not abuse its discretion because granting Solano's motion to substitute counsel would have "disrupt[ed] . . . the orderly processes of justice." (*Crovedi*, *supra*, 65 Cal.2d at p. 208.) *People v. Gaynor* (1963) 223 Cal.App.2d 575 (*Gaynor*) is instructive. In *Gaynor*, counsel was "ready to proceed with the preliminary hearing but [the] defendant, without finding any fault with his appointed counsel or providing any other explanation, asked the court to discharge his attorney and permit him to appear in propria persona." (*Id.* at p. 581.) When the court permitted the defendant to represent himself, he requested

a continuance to secure private counsel instead. (*Ibid.*) The trial court denied the request, and the defendant proceeded to represent himself at the preliminary hearing. (*Id.* at p. 579.) The Court of Appeal upheld the denial of a continuance, deeming the defendant's request a "ruse for obtaining a delay" (*id.* at p. 581) that ""would be subversive of the prompt administration and execution of the laws"" (*id.* at p. 582).

The same is true here. Lewis was ready to proceed with the preliminary hearing. Solano made no showing that her representation had been inadequate. Garcia's participation in the case was speculative when Solano requested the continuance. And 30 witnesses were standing by to testify. As in *Gaynor*, the trial court properly concluded that granting the continuance would have disrupted the orderly process of justice.

People v. Hernandez (2006) 139 Cal.App.4th 101 and *People v. Munoz* (2006) 138 Cal.App.4th 860, on which Solano relies, are inapposite. In both cases, the Court of Appeal faulted the trial courts for denying the defendants' continuance requests without considering the specific facts of the cases before them and the impacts of any delays. (*Hernandez*, at pp. 108-109; *Munoz*, at pp. 869-870.) Here, in contrast, the court considered the facts of Solano's case. It knew that Solano had not retained private counsel; knew that few, if any, attorneys were willing to take the case; and knew that Solano did not presently have the funds to hire any attorney who would. It knew that witnesses had been subpoenaed and were ready to testify. And it knew the case was complex, involving more than 60 charges and thousands of pages of discovery—in stark contrast to the relatively simple cases in *Hernandez* and *Munoz*. (*Hernandez*, at p. 104 [four drug-related charges]; *Munoz*, at pp. 869-870 [assault, attempted

carjacking, and attempted robbery].) There was no abuse of discretion. (*People v. Lefer* (1968) 264 Cal.App.2d 48, 50-51 [denial of defendant's motion to continue preliminary hearing to enable him to secure private counsel upheld where he made no showing that appointed counsel was inadequate]; cf. *People v. Pigage* (2003) 112 Cal.App.4th 1359, 1367 [no abuse of discretion where trial court denied defendant's request for continuance to retain private counsel where defendant did not show he had attempted to retain counsel].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michael Lief, Judge

Superior Court County of Ventura

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

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