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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RONALD SANDERS, Defendant and Appellant.	B281689 (Los Angeles County Super. Ct. No. NA105243)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Affirmed as modified.

John L. Staley, 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, Assistant Attorney General, Yun K. Lee and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Ronald Sanders appeals from a three-year, eight-month sentence following his convictions for identity theft and grand theft of personal property. Appellant represented himself at trial, and his claims on appeal arise from the hearing on his self-representation motion pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). Appellant contends his *Faretta* waiver was invalid, because he was misadvised by the court that his maximum sentence would be three years in prison, rather than three years and eight months. He further contends that the trial court should have inquired further into any alleged conflict of interest between appellant and his appointed counsel before accepting appellant's *Faretta* waiver. Finally, he argues, in the alternative, that the doctrine of estoppel mandates that his sentence be reduced to no more than three years in prison. As explained below, we find no reversible error. Additionally, at the request of respondent, we will amend the abstract of judgment to reflect two additional mandatory fees. As modified, we affirm the judgment.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. *Underlying Crimes*[1]

On October 28, 2016, appellant was arrested for possession of methamphetamine. In a search incident to the arrest, police officers recovered a Visa debit card in the name of Robert Wade. Later, at the police station, an officer recovered from appellant's backpack two checkbooks in the name of Bryan Bark.

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[1] As appellant does not challenge the factual basis for his convictions, we briefly summarize the evidence.

Appellant was charged by information with identity theft (Pen. Code, § 530.5, subd. (a); count 1)[2] and grand theft of personal property (§ 487, subd. (a); count 2). Appellant pled not guilty to the charges.

B. *Faretta Waiver*

On January 11, 2017, appellant's appointed counsel informed the trial court that appellant wished to waive his right to counsel and represent himself pursuant to *Faretta*. When appellant stated that he had already completed the "pro per documents," the court informed him that it accepted only oral waivers of the right to counsel.[3] The court asked appellant whether he wished to represent himself, stating, "You have the right to do that under a U.S. Supreme Court case [*Faretta*]. If this is just a disagreement between you and your counsel that can be worked out, then we can pursue that. Is that the issue? Or is it you want to represent yourself?" Appellant answered, "I think we have gone way past the symptoms of disagreement. I believe I can represent myself at this time. We have a conflict of interest."

The court then asked appellant about his education and legal knowledge. Appellant stated that he had a college degree

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[2] All further statutory citations are to the Penal Code, unless otherwise stated.

[3] Appellant's written *Faretta* waiver is in the record on appeal. The *Faretta* waiver was on a preprinted form that lists most of the significant dangers and disadvantages of self-representation, but does not include the maximum prison sentence.

and summarized his understanding of the legal process for criminal matters. The court noted that appellant had provided a "good summary," before asking appellant whether he understood that he was entitled to counsel free of charge. Appellant stated that he understood. Appellant also confirmed that he understood the charges filed against him. The court then asked, "What's the worst sentence you could receive, from your perspective, if everything goes badly for you?" Appellant answered, "If everything goes absolute[ly] worst, I am told that I could receive a maximum of three years." The court responded: "That appears to be correct." The court warned appellant that if he misbehaved, the court would appoint an attorney to represent him for the rest of trial. The court also admonished appellant that "in my view, it's always unwise for defendants to represent themselves," that the prosecution would be represented by an experienced lawyer, and that appellant would not be granted any special privileges, but would be treated like a lawyer. The court also warned appellant that if he made a mistake that resulted in a conviction, he would not be able to claim attorney error on appeal. After appellant stated that he understood these admonishments, the court found that appellant, "under *Faretta*, made a knowing, understanding, intelligent waiver of his right to assistance of counsel free of charge with knowledge of the consequences."

After the parties agreed on a trial date, the court addressed appellant: "I was looking through the file. The original offer in the case was, I believe, three years' probation, 90 days' county jail, apparently. Do you understand you have more than time served on that right now if you were to accept the offer?" Appellant responded: "Absolutely. In fact, I received two additional offers since then that included time served. One of the

issues -- [the] principal issue in this matter is the fact that I ran an asset management company, and . . . beyond the fact not only that I did not commit this crime, if I were to plead and say that I did this even though I did not, I would lose my company. I cannot run an asset management company with identity theft on my record. This is the thing. So even though they offered me time served in the matter, I have to fight this because it simply will not fly. I['ve] been in business more than ten years now, and I've worked entirely too hard for something like this -- for me to just sit back and allow this to happen."

C. *Trial and Sentencing*

A jury found appellant guilty as charged. The prosecutor filed a sentencing memorandum indicating appellant's potential sentence was three years, eight months. Appellant raised no objection to the potential sentence.

The trial court sentenced appellant to a total of three years, eight months in state prison as follows: on count 1, the upper term of three years; on count 2, one-third the middle term, or eight months, consecutive. The court stated that it was imposing a consecutive sentence on count 2 because the crime was committed against a different victim (Bark) than the victim of count 1 (Wade). It also ordered appellant to pay various fees, including one $40 court operations assessment (§ 1465.8, subd. (a)(1)) and one $30 court facilities assessment (Gov. Code, § 70373).

Appellant timely appealed

DISCUSSION

Appellant contends (1) that his *Faretta* waiver was invalid because he was misadvised about his maximum sentence; (2) that the trial court should have inquired into the conflict of interest between appellant and his counsel before accepting his *Faretta* waiver; and (3) alternatively, that under the doctrine of estoppel, his sentence should be reduced to no more than three years in state prison.

A. *The Error during the Faretta Waiver Colloquy did not Render the Subsequent Waiver Invalid.*

In *Faretta*, *supra*, 422 U.S. 806, the United States Supreme Court held that under the Sixth Amendment, a criminal defendant "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." (*Id*. at p. 807, italics omitted.) """No particular form of words is required in admonishing a defendant who seeks to waive counsel and elect self-representation." [Citation.] Rather, "the test is whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case." [Citations.]' [Citation.]" (*People v. Burgener* (2009) 46 Cal.4th 231, 241 (*Burgener*).) "On appeal, we independently examine the entire record to determine whether the defendant knowingly and intelligently waived the right to counsel." (*Ibid*.)

As this court previously noted in *People v. Ruffin* (2017) 12 Cal.App.5th 536, there is a split in California authority whether the trial court must specifically advise a defendant who seeks to represent himself of the maximum penal consequences of the convictions. (Compare *People v. Bush* (2017) 7 Cal.App.5th 457,

469-474 (*Bush*) [advisement of penal consequences not required] with *People v. Jackio* (2015) 236 Cal.App.4th 445, 454-455 [advisement of maximum punishment, including enhancements, required].) We need not determine whether the trial court must provide such advisement because it is undisputed that a trial court may not affirmatively provide incomplete or inaccurate advisements. Here, during the waiver colloquy, the trial court confirmed appellant's understanding that the maximum time he could be sentenced to prison was three years. In fact, appellant was sentenced to three years, eight months in prison, due to the separate victims in counts 1 and 2. Thus, the waiver colloquy was defective.

Whether a defective *Faretta* waiver colloquy automatically invalidates the waiver has not been addressed by the United States Supreme Court or the California Supreme Court. (*Bush*, *supra*, 7 Cal.App.5th at p. 475.) The federal Court of Appeals for the Ninth Circuit has held that a defective waiver colloquy does not automatically vitiate a *Faretta* waiver. (*Cordova v. Baca* (9th Cir. 2003) 346 F.3d 924, 926; see also *United States v. Erskine* (9th Cir. 2004) 355 F.3d 1161, 1169 [acknowledging that "'district court's failure to discuss each of the elements [of *Faretta* waiver] in open court will not necessitate automatic reversal when the record as a whole reveals a knowing and intelligent waiver'"].) California intermediate courts considering the issue have applied different standards of review, depending on the type of error. Where a trial court provides no warning at all about the risks and complexities of self-representation, California courts have found the error structural and reversible per se. (See *People v. Lopez* (1977) 71 Cal.App.3d 568, 570-571); see also *People v. Hall* (1990) 218 Cal.App.3d 1102, 1109 ["complete absence of a waiver

of the right to counsel and of any self-representation warnings" mandates reversal].) However, where a trial court has provided warnings, California courts have declared an error in the *Faretta* waiver colloquy must be found prejudicial under the standard of *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*) before the subsequent waiver will be held invalid. (See, e.g., *Bush*, *supra*, 7 Cal.App.5th at p. 475.) We conclude that because a waiver colloquy was held in the instant case, the error in the waiver colloquy is subject to *Chapman* harmless error analysis.

Here, the record showed that aside from the eight-month error in appellant's maximum prison sentence, the trial court fully advised appellant of the risks and disadvantages of self-representation. The court informed appellant that "in my view, it's always unwise for defendants to represent themselves." It admonished appellant that if he misbehaved, he would be replaced by an appointed attorney; that appellant would be treated like a lawyer; and that the prosecution would be represented by an experienced lawyer. The court also warned appellant of the risks involved, including that if he made a mistake resulting in a conviction, he would not be able to claim attorney error on appeal. Appellant, who was college educated and had run an asset management company for 10 years, stated he understood the risks. He demonstrated a solid understanding of the criminal legal process, and had filled out a *Faretta* waiver form that enumerated the principal dangers and consequences of self-representation. Appellant also explained that he had rejected multiple plea offers for probation and time served because admitting to the charges would result in the loss of his company and his 10-year career in asset management. After considering the "record as a whole," (*Burgener*, *supra*, 46 Cal.4th

at p. 241) we are convinced beyond a reasonable doubt that had appellant been informed that the maximum prison sentence was eight months longer than the three years he was advised, he would nonetheless have waived his right to counsel and represented himself at trial. Thus, the subsequent *Faretta* waiver was valid, and the trial court did not err in accepting appellant's waiver and granting his request for self-representation.

B. *The Trial Court did not have a Duty to Inquire into the Alleged Conflict of Interest between Appellant and his Trial Counsel.*

As noted above, when informed that appellant wished to represent himself, the trial court asked appellant whether he wished to represent himself because of a disagreement with his appointed counsel. Appellant responded that the "conflict of interest" with his counsel went beyond the "symptoms of disagreement," and stated that he could represent himself. Appellant now contends the trial court should have inquired further into the alleged conflict of interest. To the extent appellant is arguing that his reference to an alleged conflict of interest suggests his self-representation motion was equivocal, we disagree. As noted above, after considering the record as a whole, nothing suggests appellant's request to represent himself was ambiguous.

To the extent appellant argues that the reference is an oblique request for substitute counsel due to an irreconcilable conflict with current appointed counsel under *People v. Marsden* (1970) 2 Cal.3d 118, 124 (*Marsden*), nothing in the record suggests that appellant was seeking substitute counsel. (See

People v. Sanchez (2011) 53 Cal.4th 80, 89-90 [trial court required to conduct *Marsden* hearing only if defendant provides "'some clear indication'" he wishes substitute counsel].) "Given defendant's insistence on self-representation, the trial court was under no obligation to conduct an inquiry into any dissatisfaction defendant might have with his appointed counsel." (*People v. Mendoza* (2000) 24 Cal.4th 130, 157; see *id.* at pp. 155-157.) Thus, the trial court did not have a duty to inquire further into the alleged conflict of interest between appellant and appointed counsel.

C. *The Doctrine of Estoppel does not Apply.*

Alternatively, appellant contends his sentence should be reduced to no more than three years in state prison under the doctrine of estoppel, as codified in Evidence Code section 623. Evidence Code section 623 provides: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." We conclude appellant has not demonstrated that estoppel should apply. Nothing suggests the trial court "intentionally and deliberately" misrepresented the maximum prison term to persuade appellant to represent himself at trial. Indeed the court stated its opinion that it was unwise for appellant to do so. More important, appellant has not shown detrimental reliance, or a change in position based on the court's statement. (See *People v. Reyes* (1989) 212 Cal.App.3d 852, 857 [detrimental reliance is essential element of estoppel].) He has not shown he would not have waived his right to counsel had he been informed that he was facing a maximum of three

years, eight months in prison. Rather, as stated above, the record as a whole shows that appellant would have waived his right to counsel even had he been informed of the correct maximum sentence. Accordingly, the doctrine of estoppel does not apply to appellant's case.

D. *The Trial Court Should have Imposed a Court Operations Assessment and a Court Facilities Assessment on Each of Appellant's Felony Convictions.*

Appellant was convicted of identity theft and grand theft of personal property. Under section 1465.8, subdivision (a)(1), "[t]o assist in funding court operations, an assessment of forty dollars ($40) shall be imposed on every conviction for a criminal offense." Similarly, under Government Code section 70373, subdivision (a)(1), "[t]o ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense . . . . The assessment shall be imposed in the amount of thirty dollars ($30) for each misdemeanor or felony . . . ." Thus, the court should have imposed both assessments on each of appellant's two felony convictions. Accordingly, we will modify the judgment and abstract of judgment to reflect the additional assessments. (*People v. Sencion* (2012) 211 Cal.App.4th 480, 485.)

DISPOSITION

The judgment and abstract of judgment are amended to reflect two court operations assessments (§ 1465.8, subd. (a)(1))

and two court facilities assessments (Gov. Code, § 70373). As modified, the judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.