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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.

TYRANDA MCDANIEL,

Defendant and Appellant.

B285280

(Los Angeles County
Super. Ct. No. BA374123)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Robert J. Perry, Judge. Affirmed.

Vanessa Place, 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, Susan Sullivan Pithey and Michael J. Wise,
Deputy Attorneys General, for Plaintiff and Respondent.

A jury found appellant Tyranda McDaniel guilty of multiple violent and sexual felonies against four different victims, and the trial court sentenced McDaniel to 757 years to life in state prison. Prior to trial, however, McDaniel and the prosecution had negotiated a plea agreement, which included a 48-year sentence in state prison. Initially, the trial court accepted the parties' plea agreement. However, upon discovering a legal error in the agreement, the court found the agreement unauthorized and refused to enforce it. The trial court offered McDaniel the option of withdrawing his plea or agreeing to a modified and authorized sentence, both of which options McDaniel rejected. Thus, the trial court withdrew the plea and ordered the parties to trial.

McDaniel argues the trial court committed reversible error when it withdrew the plea agreement and, as a result, his convictions must be set aside. As discussed below, we disagree and affirm.

BACKGROUND

McDaniel was arrested on July 27, 2010, and later was charged with 10 violent felony counts, including rape and aggravated kidnapping, against four different victims. In addition, McDaniel previously had been convicted of rape. The factual details of the underlying charges are not relevant to the single issue on appeal.

On March 6, 2017, approximately six and a half years after his arrest, McDaniel entered into a plea agreement. In exchange for a negotiated sentence of 48 years in state prison, McDaniel entered a plea of no contest to six of the 10 charges as well as to the fact of his prior rape conviction. The trial court and all

counsel agreed that McDaniel would receive one-for-one custody credits related to the time he spent in custody pending sentencing. Initially, at the hearing on the plea agreement, the trial court approved the parties' agreement and set the matter for sentencing a few weeks later on March 28, 2017. McDaniel had been in custody since his arrest and would have been in custody a total of 2,437 days at the time of the scheduled sentencing hearing.

However, during a brief recess after accepting McDaniel's plea, the trial court realized the plea agreement miscalculated presentence custody credits. As a result, the agreed upon sentence was unauthorized as a matter of law and the court could not approve it. In particular, because the plea agreement contemplated one-for-one presentence custody credits instead of at the legally required 15 percent rate, the court incorrectly had advised McDaniel he would receive 2,437 days (or, approximately six and a half years) in custody credits when in fact the correct amount was 366 days (or, approximately one year). Thus, the error resulted in a negotiated sentence that was approximately five years shorter than what was legally permissible.

The trial court ordered the parties back to court to discuss the error it had discovered. The court noted it had made a legal error, which neither defense counsel nor the prosecutor pointed out, and which the court could not approve as part of the plea agreement. The court explained the difference in length between the sentence proposed by the plea agreement and that which the court could legally approve. The court gave McDaniel the option of either maintaining his plea with the understanding he would be facing a longer sentence than originally contemplated, or withdrawing his plea.

Counsel for McDaniel refused both options. Counsel stated McDaniel entered the plea agreement with the understanding he would receive the one-for-one custody credits that had been agreed to during the hearing earlier that day. Counsel explained, “My client didn’t misunderstand[an]d the plea. He knew exactly what he was pleading to at the time he plead[ed]. And so we can be real clear, the court introduced the one-to-one credit that my client would be given.” Counsel noted the prosecution also agreed to the one-for-one custody credit calculation and should be held to its agreement. Defense counsel reiterated, “I am not and my client is not withdrawing his plea,” “I’m not unhappy with the plea. My client is happy with the plea. We’re not unhappy with it. He’s happy with it, . . . he just wants what he agreed to, that’s all.” Defense counsel also suggested that, in order to keep the sentence at the bargained-for length, the prosecution could dismiss one of the counts to which McDaniel had pleaded no contest. He stated, “[T]he numbers can be fixed.” “The prosecution can take off one of the counts of six years.” The trial court rejected that suggestion.

The trial court repeatedly explained the plea agreement was an illegal plea and could not be enforced as such. The trial court also repeatedly chided defense counsel for what the court believed was an attempt to take advantage of its legal error. Addressing counsel, the court stated, “[You] sat here and let the court make a misstatement of law and went along with it.” “I am very disappointed that you would try to argue that you can sit there, let a court make a misstatement of law and then try to benefit from it. That is not my understanding of the law. I think it borders on sharp practice. I think it is unbecoming to a lawyer to do that.” And again, the court reprimanded counsel, “I don’t

think you can take advantage of a court's error, particularly when the court has caught it as quickly and as soon as I did."

Despite the trial court's repeated explanation that it could not enforce an illegal sentence, defense counsel indicated he would file either or both a motion or a writ petition to enforce the plea agreement. Toward the end of the hearing, defense counsel appeared to make an oral motion to enforce the plea agreement, which the trial court denied. McDaniel never filed a writ petition.

Because McDaniel did not withdraw his plea and the trial court would not approve or enforce the agreement, the trial court deemed the plea withdrawn and the case went to trial. Toward the end of trial, defense counsel again brought up the matter of the plea agreement. At that time, the trial court reiterated its ruling, stating, "I ordered that that plea be withdrawn because you felt that [McDaniel] was entitled to credits that he was not entitled to. That was a material factor, I felt, in the plea agreement and that's why I ordered the plea nullified."

The jury found McDaniel guilty on all charges, and the trial court found true his prior rape conviction. The trial court sentenced McDaniel to 757 years to life in state prison.

McDaniel appealed.

DISCUSSION

McDaniel raises one claim on appeal. He argues the trial court erred when it withdrew the previously accepted plea agreement. As a result of the court's alleged error, McDaniel contends his convictions must be set aside.

1. Standard of Review

We review the trial court's decision to withdraw its approval of a plea agreement for an abuse of discretion. (*People v. Loya* (2016) 1 Cal.App.5th 932, 946 (*Loya*).)

A court abuses its discretion when it acts arbitrarily and "exceeds the bounds of reason, all of the circumstances being considered." (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) Judicial discretion "implies absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason. Discretion in this connection means a sound judicial discretion enlightened by intelligence and learning, controlled by sound principles of law, of firm courage combined with the calmness of a cool mind, free from partiality, not swayed by sympathy or warped by prejudice or moved by any kind of influence save alone the overwhelming passion to do that which is just.'" (*People v. Stringham* (1988) 206 Cal.App.3d 184, 200 (*Stringham*).)

2. Applicable Law

a. Plea Agreements

"We start with the basic proposition that '[j]udicial approval is an essential condition precedent to any plea bargain worked out by the defense and the prosecution.' [Citation.] The parties' negotiated disposition is ineffective unless and until it is approved by the court." (*Stringham, supra*, 206 Cal.App.3d at p. 194.) A similarly basic proposition is the notion that "[t]he

court's approval of a proposed plea bargain must necessarily be an informed decision." (*Ibid.*)

A court cannot enforce an unauthorized or illegal provision of a plea agreement. "The court must exercise its sentencing authority in accordance with the Penal Code, public policy, and decisional law. [Citation.] . . . A plea bargain is limited to 'powers legally available to' the court." (*People v. Renfro* (2004) 125 Cal.App.4th 223, 230.) Section 1192.5 of the Penal Code (section 1192.5)¹ provides that a plea agreement "may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it."

As our Supreme Court has stated, section 1192.5 impliedly vests a court with "broad discretion to withdraw its prior approval of a negotiated plea." (*People v. Johnson* (1974) 10 Cal.3d 868, 873 (*Johnson*).) Specifically, that section provides that, when a trial court approves a plea agreement, the court "shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so." (§ 1192.5.) Thus, the "potential for reflection and a change of the judicial position is obvious and statutorily sanctioned. '[I]mplicit in the language of section 1192.5 is the premise that the court, upon sentencing, has broad discretion to

¹ Subsequent undesignated statutory references are to the Penal Code.

withdraw its prior approval of a negotiated plea.’ [Citation.] That statute ‘provides that the court’s approval of a plea bargain is not binding on the court and that approval may be withdrawn at the time of sentencing if the court, after further consideration and in the exercise of its inherent discretion in sentencing, concludes that the bargain is not in the best interests of society’ [citation] or ‘upon [the court] being more fully informed about the case.’ [Citations.] A change of the court’s mind is thus always a possibility.” (*Stringham, supra*, 206 Cal.App.3d at p. 194.) Accordingly, until the time of sentencing, the trial court “remains free, even after initial approval, to finally reject [a plea bargain]” and may withdraw its acceptance of a plea agreement. (*People v. Daugherty* (1981) 123 Cal.App.3d 314, 322; *Stringham, supra*, 206 Cal.App.3d at pp. 196, 199.)

Thus, if a trial court initially approves a plea agreement but discovers before sentencing that the agreement was unauthorized as a matter of law and therefore cannot be enforced, the trial court should either (1) ask for the parties’ consent to modify the agreement so that it is authorized as a matter of law, (2) permit either party to withdraw its acceptance of the plea agreement, or (3) withdraw its approval of the agreement. (See, e.g., § 1192.5; *Johnson, supra*, 10 Cal.3d at p. 873 [trial court erred by not giving defendant the opportunity to withdraw his plea]; *Loya, supra*, 1 Cal.App.5th at p. 947 [trial court “may reject the bargain, but it cannot change the agreement without the consent of the parties”]; *People v. Superior Court (Sanchez)* (2014) 223 Cal.App.4th 567, 573 (*Sanchez*) “[b]ecause the parties were subject to a mistake of law, the People were entitled to rescind the agreement” and “the trial court should have withdrawn its approval of the agreement when

it recognized the illegality”]; *People v. Pinon* (1973) 35 Cal.App.3d 120, 125 [when the trial court cannot effectuate a plea agreement, the “defendant must be given an opportunity to withdraw his guilty plea”].)

b. Presentence Custody Credits

In cases involving violent felonies such as those at issue here, presentence custody credits are specifically limited by law to a 15 percent rate. (§ 2933.1.)

3. The trial court did not abuse its discretion.

The parties do not dispute that the plea agreement miscalculated McDaniel’s presentence custody credits. Indeed, McDaniel does not squarely address the appropriate calculation of his custody credits. Instead, he argues he should receive the benefit of his bargain (i.e., the unauthorized sentence). He also makes a variety of other arguments that simply are not relevant or are misleading in light of the undeniable fact that, as a matter of law, the plea agreement miscalculated his custody credits.

As noted above and explained by the trial court, instead of calculating McDaniel’s custody credits at the 15 percent rate required by section 2933.1, the plea agreement improperly calculated one-for-one custody credits. Thus, McDaniel and the prosecution agreed to and the trial court briefly approved a plea agreement that would have resulted in an unauthorized and unenforceable sentence. “A sentence is unauthorized ‘where it could not lawfully be imposed under any circumstances in the particular case [such as] . . . where the court violates mandatory provisions governing the length of confinement.’” (*People v. Gisbert* (2012) 205 Cal.App.4th 277, 280.) Specifically here, if the custody credit error were allowed to stand, McDaniel’s sentence

would have been more than five years shorter than that required by law.

Upon discovering the legal error in the plea agreement, the trial court correctly offered McDaniel the option of either withdrawing his plea or maintaining the plea agreement as modified with the corrected (i.e., longer) sentence. (See, e.g., *Johnson, supra*, 10 Cal.3d at p. 873; *Loya, supra*, 1 Cal.App.5th at p. 947; *Pinon, supra*, 35 Cal.App.3d at p. 125.) McDaniel refused both options and instead argued he should receive the benefit of his bargain, i.e., the shorter, unauthorized sentence. However, that was not a viable option. Thus, because McDaniel did not agree to the modified sentence, the trial court could not unilaterally amend the plea agreement. (*Loya*, at p. 947.) Consequently, the trial court correctly withdrew its approval of, and refused to enforce, the unauthorized sentence. (*Sanchez, supra*, 223 Cal.App.4th at p. 573.)

McDaniel argues that, rather than withdraw its approval of the plea agreement, the trial court incorrectly withdrew McDaniel's acceptance of the plea agreement. McDaniel claims "the court did not withdraw *its* approval of the negotiated plea based on some conflict with judicial or public policy, but rather withdrew [*McDaniel's*] agreement to the deal on [his] behalf, based on its determination that [McDaniel] would not want to serve an additional 1,900 days." First, this is not accurate. As previously noted, the trial court refused to enforce the plea agreement because the agreement was legally unsound. And, after discovering the legal error, the court gave McDaniel the option of either withdrawing his plea or accepting the plea agreement with a modified—and, therefore, longer—sentence reflecting the proper custody credits. McDaniel refused both

options, instead insisting that the court enforce the original plea agreement despite its unauthorized sentence. Thus, contrary to his position on appeal, it was not the trial court that determined McDaniel would not want to serve the longer sentence; McDaniel made that decision himself. Second, in the circumstances of this case, it is immaterial whether the trial court withdrew its approval of the plea agreement or deemed McDaniel's plea withdrawn. Either way, the contemplated sentence was unauthorized and the trial court could not enforce it as a matter of law.

Also, to the extent McDaniel argues his due process rights were violated below, we disagree. Contrary to the cases on which McDaniel relies, this is not a case where the state violated an approved and duly executed plea agreement. Nor is this a case where the trial court improperly inserted itself into the plea bargaining process or demonstrated a bias or prejudgment. And contrary to McDaniel's statements, there was no minor or immaterial mistake of fact here. Rather, when initially calculating McDaniel's presentence custody credits, the trial court clearly mistook the law—a legal error that resulted in a significant discrepancy with respect to the length of McDaniel's negotiated sentence.

Finally, although on appeal the parties point fingers with respect to who is to blame for the custody credit error, fault is irrelevant. Regardless of who is to blame, if anyone, a legal error occurred and resulted in an unauthorized sentence. Accordingly, the trial court correctly withdrew its approval of the plea agreement (or deemed the plea withdrawn) and refused to enforce it.

In sum, we conclude the trial court did not abuse its discretion when it refused to enforce an illegal sentence, offered McDaniel two viable options, and, when both were refused, proceeded to trial.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.