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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORDAN JOHN NOE,

Defendant and Appellant.

2d Crim. No. B296050  
(Super. Ct. No. 18F-07019)  
(San Luis Obispo County)

Jordan John Noe pled guilty to carrying a concealed dirk or dagger. (Pen. Code,<sup>1</sup> § 21310.) The trial court sentenced him to 16 months in county jail. Noe contends the court erred when it denied his motion to withdraw his plea. We affirm.

**FACTUAL AND PROCEDURAL HISTORY**

In July 2018, a San Luis Obispo police officer saw Noe holding a bottle that appeared to contain wine. The officer told Noe to sit on the curb and hand him the bottle. Noe refused and drank his beverage. The officer handcuffed him and found a

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<sup>1</sup> All further statutory references are to the Penal Code.

knife in his jacket pocket. Noe tried to get out of his handcuffs as the officer put him in the patrol vehicle.

Prosecutors charged Noe with carrying a concealed dirk or dagger and resisting arrest (§ 148, subd. (a)(1)). On August 16, Noe pled guilty to carrying a dirk or dagger in exchange for dismissal of the resisting charge and a three-year grant of probation. The prosecutor said that Noe would be released from jail that day, and was to return for sentencing on October 4. If he broke any laws, he could be sentenced to up to three years in state prison. Noe was not released from custody until August 18.

On September 11, Noe appeared at a hearing on a probation violation and several infractions and misdemeanors unrelated to his plea, some of which he allegedly committed after August 16. During the hearing, he moved to withdraw his August 16 plea because he “agree[d] to be released on the 16th[] and . . . was not released until the 18th.” He told the trial court that “the whole reason [he] took the plea was so [he] would be released” that day, and that he “didn’t get what [he] wanted out of the deal.”

After a brief recess, the prosecutor said that he would dismiss the pending infractions and misdemeanors if Noe rescinded his motion to withdraw the August 16 plea and agreed to a 30-day jail sentence on his probation violation. The trial court told Noe that he had 11 days of actual custody credits, which meant that he had “roughly four days left to serve.” He would be released from custody that day, and would serve his remaining days beginning on October 15. Noe agreed to the plea terms. He was not released from custody until two days later, on September 13.

Based on the extra two days he spent in custody, Noe moved to withdraw his September 11 plea and, in turn, revive his motion to withdraw his August 16 plea. He claimed that each time he pled he bargained to be released that day, but each time he remained in custody for an additional two days. The trial court denied Noe's motion. It concluded that the additional time Noe spent in custody postplea did not undermine his plea agreements.

### DISCUSSION

Noe contends the trial court erroneously denied his motion to withdraw his guilty pleas. We disagree.

The trial court may permit a defendant to withdraw a guilty plea for "good cause shown." (§ 1018.) The prosecution's breach of a plea bargain—whether purposeful or inadvertent—can provide good cause for withdrawing a plea. (*People v. Casillas* (1997) 60 Cal.App.4th 445, 450; see *Santobello v. New York* (1971) 404 U.S. 257, 262 ["That the breach of agreement was inadvertent does not lessen its impact"].) A breach constitutes good cause if: (1) it results in a punishment that "significantly exceed[s] that which the parties agreed upon" (*People v. Silva* (2016) 247 Cal.App.4th 578, 587), and (2) the defendant shows "that [they] would not have agreed to the [plea] terms had [they] been aware of the additional punishment" (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1386). We review the trial court's denial of a motion to withdraw a plea for abuse of discretion. (*People v. Patterson* (2017) 2 Cal.5th 885, 894.)

There was no abuse of discretion here. Even if we assume that Noe would not have agreed to the terms of the September 11 plea had he known he would spend the next two days in custody, he has not shown that his punishment in that

case significantly exceeded that to which he agreed. In the September 11 plea, Noe agreed to serve 30 days in jail for his probation violation. With accrued credits, Noe had to spend four more days in custody to complete that sentence. The two days he spent in custody after he pled may not have occurred when he wanted, but they did not exceed the four days he agreed to serve. The breach of the plea agreement thus did not provide good cause for Noe to withdraw the September 11 plea. His agreement not to prosecute his motion to withdraw his August 16 plea accordingly remained in force.

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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