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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT MORENO,

Defendant and Appellant.

B286242

(Los Angeles County
Super. Ct. No. NA105135)

APPEAL from an order of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Affirmed.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Robert Moreno appeals from a postjudgment order denying his second motion to withdraw a plea of guilty¹ to aggravated assault entered as part of a negotiated agreement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 15, 2016, Moreno was charged in an information with assault with a deadly weapon with a great bodily injury and prior prison term enhancement allegation. Represented by counsel and pursuant to a negotiated agreement, Moreno pleaded guilty to an amended count of assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and admitted the great bodily injury and prior prison term enhancement allegations. In return, Moreno was to be sentenced to an aggregate state prison term of three years.

Prior to sentencing on June 22, 2017, defense counsel informed the trial court that Moreno wished to withdraw his plea based on ineffective assistance of counsel. The trial court agreed the motion should be treated as a motion to replace appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*)) and, if it proved to be meritorious, new counsel would be appointed to represent Moreno on the motion to withdraw his plea.

Following an in camera hearing, the trial court denied Moreno's *Marsden* motion, his motion to withdraw his plea and his request to reduce the charged aggravated assault to battery with serious bodily injury.

In accordance with the plea agreement, the court sentenced Moreno to the two year lower term for assault with force likely to

¹ The record does not show whether Moreno pleaded guilty or no contest, as the plea hearing was not included in the record on appeal.

produce great bodily injury plus one year for the prior prison term enhancement and stayed sentencing on the great bodily injury enhancement. The court imposed statutory fines, fees and assessments and awarded Moreno 309 days of presentence custody credits.

On July 17, 2017, Moreno, representing himself, again asked to withdraw his plea in a letter to the trial court. After several continuances, Moreno appeared in court on October 11, 2017, represented by counsel. Moreno informed the court that he wanted to exercise his *Faretta* rights (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562]) to represent himself. The court granted the request and relieved the public defender's office as counsel of record.

After acknowledging he had previously moved to withdraw his plea prior to sentencing, Moreno explained he again wanted to withdraw his plea because of ineffective assistance of counsel. Moreno argued counsel had failed to provide him with discovery, to conduct sufficient investigation and to communicate with him about potential defenses.

The prosecutor told the court that the initial plea offer was a five-year sentence on the original charge of assault with a deadly weapon. However, after speaking with defense counsel, the prosecutor agreed to file an amended charge of assault with force likely to produce great bodily injury and to offer a three year sentence, which included the one year prior prison term enhancement. The prosecutor argued that this had resulted in a reduced sentence, without a felony strike conviction.

In denying Moreno's motion, the court observed it was based on essentially the same arguments as his earlier presentence motion to withdraw his plea.

Moreno filed a timely notice of appeal from the order denying his motion to withdraw his plea.

DISCUSSION

We appointed counsel to represent Moreno on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On March 21, 2018 we advised Moreno he had 30 days to submit any contentions or issues he wanted us to consider. Moreno responded by letter, asking to withdraw his appeal, but counsel was unable to confirm Moreno's consent to do so. Moreno raised no substantive issues.

We have examined the record and are satisfied that appellate attorney for Moreno has complied with the responsibilities of counsel and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.