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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DAVID WILSON, Defendant and Appellant.	B263304 (Los Angeles County Super. Ct. No. TA135553)

APPEAL from a judgment of the Superior Court of Los Angeles County, Tammy Chung Ryu, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant David Wilson appeals a judgment entered after he pled guilty to second degree vehicular burglary. The court imposed a prison sentence of 32 months in prison to run concurrently with a four-year term for violation of his probation in an earlier theft case. Appellant contends the trial court's advisements in connection with his guilty plea in this case were erroneous because the trial court represented the four-year sentence for the probation violation was mandatory. Appellant claims that, had he known that the trial court had discretion to reinstate probation in the earlier case if he was acquitted in this case, he may well have proceeded to trial rather than enter a guilty plea.

We conclude the trial court had no obligation to disclose the range of dispositions available for the probation violation. Because the sentence imposed for violation of probation was an independent decision in a separate case, it was not a "direct consequence" of his plea in this case. Having been fully advised of all of the direct consequences of his plea in this case, appellant knowingly, intelligently, and voluntarily waived his constitutional rights when he entered his plea. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The July 31, 2013 information filed in superior court case No. TA128883 (the "earlier case") accused appellant of committing grand theft of personal property (count 1) and burglary of a storage container (count 2). Appellant entered a September 26, 2013 no contest plea to both counts. The court imposed, but stayed execution of, a sentence of four years in prison on count 1, ordered appellant to serve a year in county jail, and placed him on formal probation for three years. While he was on probation, appellant was arrested on a new theft charge. The November 18, 2014 information filed in superior court case No. TA135553 (the "new case") accused appellant of committing a vehicular burglary on or about October 18, 2014.

The court summarily revoked appellant's probation on October 21, 2014. On November 4, 2014, the court (Judge John J. Lonergan, presiding) held a hearing on the probation violation concurrently with the preliminary hearing in the new case. Based on the evidence presented at the hearing, the court held appellant to answer in the new case and found appellant in violation of the terms and conditions of his probation in the earlier case. The court declined to lift the stay of execution of the suspended sentence on the probation violation "in order to allow a package offer whenever it becomes available to [appellant]."

At the November 18, 2014 hearing, appellant pled not guilty in the new case. With respect to sentencing on the probation violation, there is evidence the arraignment court (Judge Laura A. Walton, presiding) informed appellant she intended to lift the stay of execution and impose the four-year sentence.[1] As appellant's counsel recounted at the December 4, 2014 hearing (Judge Allen Webster, presiding), "Judge Walton explained to [appellant] the last time he was here that he's getting the four years suspended on the probation violation. He doesn't seem to understand that. No matter how he slices it, he is getting the four years, less any credits he has." On December 4, 2014, Judge Walton also communicated her intention directly to appellant. After stating the court had found appellant in violation of probation, Judge Walton told appellant, "the court is intending to sentence you as to your four years in state prison on your probation violation."

When the court (Judge Tammy Chung Ryu, presiding) called both cases on January 20, 2015, it reiterated the four-year suspended sentence "is going to be the sentence in [the earlier case]." The prosecutor inquired whether the court would accept a plea bargain consisting of 32 months in prison on the new case to run concurrently with the four years appellant "has to serve" in the probation case. The court answered affirmatively, reminding appellant that because he "has four years suspended, looks like that's what's going to be imposed regardless of what happens on the trial [in the new

[1] The record contains no transcript of proceedings for the November 18, 2014 hearing.

case]." The court further informed appellant that "[e]ven if you're not found guilty [in the new case], you'll still get the four years [in the probation case]."[2]

In the same hearing, appellant agreed to accept the prosecution's proposed plea bargain. The prosecutor advised appellant about the consequences of his guilty plea, explaining appellant would give up his constitutional rights, his maximum exposure in the new case was six years in prison, and the 32-month sentence would run "concurrent with the time you have to serve on your probation violation case." Appellant said he understood the potential consequences and expressed his understanding that pleading guilty in the new case was in his best interest.

When appellant appeared for sentencing on January 23, 2015, he asked to withdraw his guilty plea on grounds of mental illness. The court (Judge Ryu, presiding) reminded appellant the court intended to lift the stay of execution of his four-year sentence for his violation of probation regardless of whether he accepted a plea bargain in this case. The court explained that "[the court] at [the] preliminary hearing had already found that you were in violation of probation. So you were already going to get the four years regardless of what happens on the new case. . . . So you are going to get the four years. . . . [¶] . . . It does not matter whether I allow you to withdraw your plea or not [in the new case]." Appellant replied he understood. After further discussion, appellant abandoned his request to withdraw his guilty plea and accepted the plea bargain.

[2] The prosecutor also referred to the four-year sentence as the time "you have to do" in the probation case.

The court then lifted the stay of execution of the previously imposed four-year prison term for appellant's violation of probation on count 1 (burglary), selecting the two-year middle term, doubled because of a strike. In this case, the court sentenced appellant to a concurrent prison term of 32 months in accordance with the plea agreement. At no time at or before sentencing did appellant object to, or make a Penal Code section 1018 motion to withdraw, his guilty plea on the ground the trial court erroneously failed to advise, or misadvised, appellant about the consequences of his plea.

APPLICABLE LAW

The burden is on appellant to demonstrate error from the record; error will not be presumed. (*In re Kathy P.* (1979) 25 Cal.3d 91, 102; *People v. Garcia* (1987) 195 Cal.App.3d 191, 198.)

Where a court has stayed the execution of a sentence as a condition of probation and later finds the defendant in violation of probation, it has discretion to (1) reinstate probation on the same or different terms, (2) terminate probation, revoke the suspension of sentence and impose the prison term, or (3) terminate probation without revoking the suspended sentence or ordering confinement. (*People v. Howard* (1997) 16 Cal.4th 1081, 1087-1088, 1094-1095; *People v. Medina* (2001) 89 Cal.App.4th 318, 319-323; *People v. Latham* (1988) 206 Cal.App.3d 27, 29.)

A defendant's guilty plea must be knowing, intelligent, and voluntary. (*People v. Smith* (2003) 110 Cal.App.4th 492, 500.) A defendant's plea is knowing, intelligent, and voluntary when the defendant knows the "direct consequences" of his plea. (*People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1481.) The trial court has an obligation to advise a defendant of the direct consequences of his guilty plea. (*In re Moser* (1993) 6 Cal.4th 342, 351; *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) "A plea's direct consequences are those that ' "follow inexorably' " from the plea, and may include the permissible range of punishment, imposition of a restitution fine, ineligibility for probation, a maximum parole period, registration as a criminal offender, and revocation or suspension of one's driver's license." (*People v. Aguirre* (2011) 199 Cal.App.4th 525, 528.)

A defendant claiming error based upon the court's advisements in connection with his guilty plea must establish prejudice. (*People v. Wright* (1987) 43 Cal.3d 487, 499.) Even if the court erred in its advisements, reversal is not warranted unless "it was reasonably probable the outcome would have been more favorable to defendant if he had been properly advised." A defendant complaining he was misadvised must demonstrate it is reasonably probable that, with proper disclosures, defendant would have proceeded differently. (*Ibid.*)

ANALYSIS

Appellant asks this court to remand the matter to the trial court to permit him to withdraw his guilty plea based on his contention the trial court improperly presented the four-year sentence on his probation violation as an "inevitable consequence." Appellant argues the trial court "erred when it repeatedly told Wilson that, because the judge at the preliminary hearing had found him in violation, the present Court had to impose the previously suspended sentence of four years," pointing out that "the sentencing court could have chosen to reinstate Wilson on probation instead." He complains that, as a result, "the Superior Court was able to pressure him into pleading guilty in the new case with the erroneous information that a four-year prison sentence was inevitable." Appellant claims he "may well have" insisted on going to trial in the new case "[h]ad [he] known that it was legally permissible for the court to reinstate probation rather than impose the suspended four-year sentence."

Appellant cites no authority for the proposition a court accepting a guilty plea in an open case must disclose the range of sentences available in a different case where the court has found the defendant in violation of probation. Although a court must disclose all of the direct consequences of a guilty plea before accepting the plea, the obligation pertains to potential consequences in the case in which the defendant pleads guilty. For example, there is authority for required disclosure of the range of punishment available on the charges the defendant admits in his guilty plea. (*E.g.*, *People v. Aguirre*, *supra*, 199 Cal.App.4th at p. 528.) As the court observed in *People v. Moore* (1998)

69 Cal.App.4th 626, 630, "[t]he advice requirement generally only extends to 'penal' consequences [citations], which are 'involved in the criminal case itself.' "

The trial court in this case had no obligation to advise appellant about the range of dispositions available for his probation violation because he violated probation in a separate case and the sentence on the probation violation was not part of the plea bargain in this case. In *People v. Searcie* (1974) 37 Cal.App.3d 204 (*Searcie*), the defendant pled guilty to charges of forgery and burglary while he was already on probation for an earlier conviction for receiving stolen property. After the defendant pled guilty, Judge Dell (the judge who placed the defendant on probation in the earlier case) found the defendant in violation of his probation and sentenced him to two years in prison. On appeal from the judgment in his probation case, the defendant contended the sentence was erroneous because the probation violation was part of the plea bargain. He also argued that, when he pled guilty to the new charges, the trial court failed to disclose the potential for additional confinement on the probation violation.

The appellate court in *Searcie* rejected the first argument, finding that "neither plea bargain, spread on the record in each case, can be reasonably construed to cover [Judge Dell's sentence on the probation violation]." (*Searcie, supra,* 37 Cal.App.4th at p. 209.) With regard to advisements, the *Searcie* court explained, "[w]hile it is true that . . . a defendant must be advised of the direct consequences of his plea, such as the permissible range of sentences, the requirement relates to consequences directly involved in the criminal case itself, and not to collateral consequences." (*Id*. at p. 211.) The court concluded the "possibility of revocation of probation and subsequent prison sentence in the instant case, if a consequence of the pleas of guilty in the forgery and burglary cases, were at most a collateral consequence which in no way directly affected or were directly involved in those cases." (*Ibid.,* fn. omitted.) Because the probation violation and sentencing were not the " 'primary and direct consequences' " of his convictions in the forgery and burglary cases, there was no need to disclose the potential additional punishment. (*Ibid.*; see also *People v. Martinez* (1975) 46 Cal.App.3d 736, 745 [guilty

plea taken without disclosure of possible disposition or additional sanctions for potential probation violation was knowing and voluntary].)[3]

Likewise, in this case, the sentence on the probation violation was not a direct consequence of appellant's guilty plea. Indeed, because the trial court held a hearing, found appellant in violation of probation, and made the decision to lift the stay of execution of the four-year sentence *before* considering or accepting any plea bargain, the four-year sentence was not and could not have been a "direct consequence" of the *subsequent* plea bargain.

It is also clear, from the record, that the four-year sentence for violation of probation was not otherwise related to, or contingent on, appellant's agreement to plead guilty in this case. From the time of the first sentencing hearing on November 18, 2014, the court expressed its unwavering determination to lift the stay of execution of the four-year sentence, regardless of whether appellant accepted a plea bargain in the new case or exercised his right to a jury trial. As appellant's attorney recounted on December 4, 2014, appellant was told, "*he's getting the four years suspended on the probation violation*. He doesn't seem to understand that. *No matter how he slices it, he is getting the four years, less any credits he has*." (Italics added.)

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[3] The decision in *In re Gary O.* (1978) 84 Cal.App.3d 38 is distinguishable. In that case, the juvenile admitted the charge after court represented his maximum confinement would be six months. Applying the higher standard of review for denials of motions to withdraw guilty pleas made prior to sentencing (drawing all inferences in favor of appellant), the court found the trial court abused its discretion when it imposed an additional 38 months of confinement after denying the juvenile's pre-sentence request to withdraw his plea.

That same day, December 4, 2014, the court (Judge Walton, presiding) also reminded appellant the court would have already lifted the stay of execution of his four-year sentence had his attorneys not filed certain motions. The court then asked whether appellant was interested in a plea bargain in the new case: "[T]he District Attorney's Office has been generous in offering you, if you want to plead [guilty in the new] case this morning, that you can do concurrent time, meaning the same amount of time, four years state prison with no additional time for both cases today."

The court's remarks on January 20, 2015 (Judge Ryu, presiding) reiterated the court had already decided to lift the stay of execution of his sentence in the earlier case, stating, "[four years] is going to be the sentence." The prosecutor similarly described the sentence as the four years appellant "has to serve." The court's additional comments before appellant pled guilty confirmed the four-year sentence was non-negotiable: "[e]ven if you're not found guilty [in the new case], you'll still get the four years [in the probation case]." The court (Judge Ryu, presiding) made the same point when appellant asked to withdraw his plea on January 23, 2015: "Even if I allow you to withdraw your plea on the new case and let's say that case goes to trial, you are still going to get the four years on the probation case. You are still going to get the four years. Nothing's going to change that."

The court's repeated communications demonstrate the court had already exercised its discretion with respect to sentencing on the probation violation and was determined to lift the stay of execution of appellant's four-year sentence whether or not appellant pled guilty in this case or obtained a favorable result at trial. The four-year sentence was not a "direct consequence" of his guilty plea. To the contrary, the decision to lift the stay of execution of the four-year sentence preceded, and was independent of, any disposition in this case.

Appellant nevertheless argues he might have insisted on a trial had he known the court had discretion to reinstate his probation if he was acquitted at trial. This argument fails because there is no evidence the trial court had any intention of postponing sentencing on the probation violation until appellant's case was tried to verdict. To the contrary, when the court called the matter for sentencing on December 4, 2015, the court (Judge Walton, presiding) stated it would have imposed sentence at the November 18, 2014 hearing had the court not received motions from appellant that were later withdrawn. Appellant's argument also fails because the court repeatedly stated the four-year sentence would be imposed even if appellant was acquitted at trial. The record therefore contradicts appellant's speculation he might have avoided the four-year sentence on the probation violation if he was acquitted in this case.

Appellant's status as a self-represented litigant when he pled guilty in this case does not change the result. "A defendant appearing in propria persona is held to the same standard of knowledge of law and procedure as is an attorney." (*People v. Clark* (1990) 50 Cal.3d 583, 625.)

CONCLUSION

When appellant pled guilty, the trial court had no obligation to disclose the range of available dispositions for his violation of probation in an earlier case because the dispositions for the probation violation were not a direct consequence of his guilty plea in this case.[4]

[4] Because we find there was no error in the trial court's advisements, we decline to address the issue of prejudice.

DISPOSITION

The judgment is affirmed.

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HOGUE, J.*

We concur:

ALDRICH, Acting P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.