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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON WILLIAM BURTON,

Defendant and Appellant.

B290064

(Los Angeles County
Super. Ct. No. TA039158)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Clay Jacke II, Judge. Affirmed.

Jason William Burton, in pro. per.; and John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1998, Jason William Burton (Burton) shot and wounded a stranger without any provocation and tried to shoot another stranger. Facing the prospect of 75 years to life in prison, Burton agreed during trial to plead no contest to one count of attempted murder and admit a firearm enhancement in exchange for a sentence of 30 years to life in state prison.

In 2018, 19 years after being sentenced, Burton filed a motion to withdraw his plea on the ground that he agreed in 1999 to serve a sentence of 30 years, not 30 years to life. The trial court denied Burton's motion and this appeal followed.

We have reviewed the record, the briefing by Burton's appointed appellate counsel, and the supplemental briefing submitted by Burton himself. We affirm the judgment.

BACKGROUND

I. The Attempted Murder¹

On April 14, 1998, Burton, while riding a bike, approached two men who were walking on the sidewalk. After Burton asked the men whether they “gang bang or not,” he rode away. Shortly thereafter, Burton rode back toward the men, stopped, said “fuck crabs,” which is a slang expression for “disrespecting Crips,” and then began shooting at the men. Both men ran away from Burton. As one of the men ran across the street, Burton shot him four times. As the wounded man watched, Burton reloaded his

¹ These facts are taken from the transcript of Burton's preliminary hearing.

gun and fired at the other man as he fled the scene; the other man escaped, however, without being shot.

II. Burton's Plea

The People charged Burton with two counts of attempted willful, deliberate, premeditated murder (Pen. Code,² §§ 187, subd. (a), 664) and two counts of assault with a firearm (§ 245, subd. (a)(2)). In addition, the People asserted a number of special allegations. For example with regard to the attempted murder count for the man Burton wounded, the People alleged that Burton discharged a firearm which caused great bodily injury (§ 12022.53, subd. (d)).³

On December 2, 1998, during trial and after the man he wounded had testified, and after his public defender showed him a video of another's witness's statement to the police, Burton accepted a plea deal that the People had originally offered to Burton before trial. In exchange for Burton's agreement to plead no contest to one count of attempted murder and to admit the allegation that he discharged a firearm which caused great bodily injury, the People agreed to dismiss all of the remaining counts and allegations.

Before he changed his plea from not guilty to no contest, the People advised Burton that without the plea deal he potentially faced a maximum sentence of "75 years *to life*" on all counts. (*Italics added.*) In addition, the People advised him that

² All further statutory references are to the Penal Code unless otherwise indicated.

³ Section 12022.53, subdivision (d), is a sentence enhancement for crimes such as attempted murder; it applies "an additional and consecutive term of imprisonment in the state prison for 25 years *to life*." (*Italics added.*)

under the terms of his plea agreement he would serve a prison term of 30 years to life; specifically, his sentence would be the “low term of five years” for the attempted murder charge plus “25 years *to life* on the [section] 12022.53, subdivision (d) allegation making it 30 years *to life*.” (Italics added.) When the trial court explained to Burton the consequences of his plea, it advised him that he would be sentenced to state prison for a “*life term*.” (Italics added.) When the trial court asked Burton if he had any questions about “the consequences of [his] plea,” Burton replied, “no.”

III. Burton’s Attempts To Withdraw His Plea

On February 16, 1999, at the sentencing hearing,⁴ the trial court denied Burton’s motion to withdraw his plea.⁵

On February 29, 2018, Burton filed a motion to withdraw his plea, arguing that “pursuant to the negotiated disposition and his conversations with his counsel, he was to serve a sentence of 30 years and not . . . a sentence of 30 years to life.”

On March 14, 2018, at the hearing on Burton’s motion, the trial court allowed Burton, who was represented by a public defender different than the one who represented him at trial and

⁴ The record does not include a reporter’s transcript of the hearing.

⁵ Due to “inadvertence and clerical error,” the original minute order from the sentencing hearing indicated that Burton’s sentence was 30 years, not 30 years to life as required by section 12022.53, subdivision (d). As a result, the original abstract of judgment incorrectly showed a sentence of five years on the attempted murder count plus 25 years on the firearm enhancement rather than 25 years to life.

at the plea hearing, to “give his rendition” of what transpired at the time of the plea agreement. Burton explained to the trial court that his prior public defender explained the plea agreement to him and told him that 30 years was the “best deal” he could get; as a result, Burton accepted the offer. However, Burton told the trial court further that if he had known that the offer “was going to be a total of 30 [years] to life, [he] would never [have taken] the deal.”

After hearing Burton’s argument, the trial court went through the transcript of the plea hearing, noting on the record a number of instances when Burton was advised at that hearing that his sentence under the plea agreement would be 30 years to life. When the trial court asked Burton for a response to the evidence from the plea hearing contradicting his testimony, Burton declined to provide one.

“After considering [Burton’s] statement as well as the transcript of the plea,” the trial court denied the motion, finding that Burton “got the benefit of his bargain, which was the [five] years plus the [section] 12022.53[, subdivision] (d) allegation, which was then, and now, 25 [years] to life, for a total of 30 years to life.”⁶ Burton timely appealed.

On July 2, 2018, we appointed counsel to represent Burton. On August 22, 2018, after examining the record, his counsel filed an opening brief raising no issues and asking this court to independently review the record. On that same day, Burton filed his own separate supplemental brief.

⁶ The trial court also ordered that the abstract of judgment be corrected so that it reflects a sentence of 30 years to life.

DISCUSSION

I. Governing Law and Standard of Review

A. *Good Cause Required for Plea Withdrawal*

Section 1018, governing the withdrawal of guilty pleas, provides: “On application of the defendant at any time before judgment . . . the court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.” “ “Good cause must be shown for such a withdrawal, based on clear and convincing evidence. [Citation.]” [Citations.] “To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. [Citations.] Other factors overcoming defendant’s free judgment include inadvertence, fraud or duress. [Citations.]” [Citation.] “The burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty.” [Citation.]’ ” (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.)

“Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.” (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.) “A plea may not be withdrawn simply because the defendant has changed his mind.” (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.)

B. *Withdrawal Within Trial Court’s Discretion*

“When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal,

the trial court's decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]” (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496.) We “must adopt the trial court’s factual findings if substantial evidence supports them.” (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) A trial court abuses its discretion if it “exercises discretion in an arbitrary, capricious or patently absurd manner resulting in a manifest miscarriage of justice.” (*People v. Shaw*, at p. 496.)

II. No Abuse of Discretion

In his supplemental brief, Burton argues, as he did below, that “if he knew a life sentence was going to be imposed, he would not have entered a plea . . . [and] would have requested a jury trial on the criminal conduct alleged in the indictment.” For support, Burton relies on the original minute order from the sentencing hearing and the original abstract of judgment, both of which indicated that his sentence would be 30 years, not 30 years to life.

Burton’s argument is without merit, because, as the transcript of the plea hearing makes clear, Burton was repeatedly advised that the plea agreement involved a life sentence. Both the prosecutor and the trial court advised Burton that his plea of no contest would result in an indeterminate life sentence. Moreover, the record of the taking of the plea shows that Burton stated that he understood the offer and wanted to take it because it was in his “best interest to do so.” He understood the charges against him and needed no additional time to speak with his attorney or the trial court. He stated that he understood his constitutional rights and knowingly and voluntarily waived each of them.

In short, given the evidence from the plea hearing, the trial court did not act in an arbitrary, capricious or patently absurd manner when it denied Burton's motion to withdraw his plea and his admission. Put a little differently, Burton failed to meet his heavy burden of showing by clear and convincing evidence that his decision to accept the People's plea deal was based on mistake, fraud, ignorance or duress. Since the trial court did not abuse its discretion, we affirm.

Furthermore, we have examined the entire record, and we are satisfied that Burton's appellate counsel fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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