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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SHADALE L. WILLIAMS, Defendant and Appellant.	B275672 (Los Angeles County Super. Ct. No. MA067526)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard E. Naranjo, Judge. Reversed and remanded with directions.

Cynthia L. Barnes, 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, Senior Assistant Attorney General, Mary Sanchez and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Shadale L. Williams appeals from a judgment following a plea of no contest to two felony counts. While serving a life sentence, Williams was accused of killing his cell mate. He was charged with one count of murder (Pen. Code, § 187, subd. (a)) and one count of assault by a life prisoner (§ 4500).[1] Williams pleaded no contest to both counts after the trial court granted his request to represent himself and appointed standby counsel.[2] Standby counsel did not consent to the plea.

We must reverse under the plain language of section 1018, which precludes a guilty plea under these circumstances to an offense that is punishable by life imprisonment without the possibility of parole. Section 4500 defines such an offense. Accordingly, we reverse the judgment and remand with directions to the trial court to permit Williams to withdraw his plea.

BACKGROUND

1. *Williams's Request to Represent Himself and His No Contest Plea*

On December 21, 2011, Williams was charged by complaint with two felony counts. Count 1 charged that he had committed murder in violation of section 187, subdivision (a). Count 2 charged that he violated section 4500 by committing an assault "with a deadly weapon and by means of force likely to produce great bodily injury while undergoing a life sentence in the California State Prison." Both counts concerned Williams's

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[1] Subsequent undesignated statutory references are to the Penal Code.

[2] The legal effect of a plea of no contest (nolo contendere) "to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes." (§ 1016, ¶ 3.)

alleged murder of his cell mate, James Mullins, sometime between December 3, 2011, and December 4, 2011. Williams allegedly strangled Mullins to death sometime during that night.

The original charges against Williams were dismissed and the case was refiled on December 21, 2015. At his initial appearance on the refiled charges, Williams requested propria persona status. The trial court continued the matter to March 21, 2016, when Williams again requested that he be permitted to represent himself and also indicated his intention to admit the charges. Williams completed the waiver forms for self-representation, and the court granted propria persona status.

At the next appearance on April 4, 2016, Williams stated that he wanted to enter a plea. The court provided Williams with a copy of the plea waiver form and continued the case to April 6, 2016.

At the continued hearing on April 6, the court appointed standby counsel. The court explained that it did so "since Mr. Williams was planning on entering into a plea agreement and the sentence was [life without the possibility of parole (LWOP)], pursuant to Penal Code section 1018."

After conferring with Williams, standby counsel Larry Baker reported to the court that Williams wanted to enter a plea of guilty or no contest. Baker said that Williams has "doubts about his convictability" but "is driven by spiritual concerns." Baker said that, "at least at this stage I cannot say that I concur with his decision."

Williams explained that he wanted to plead because "I believe a man has a right spiritually and carnal to take responsible [*sic*] for being guilty." He said that his intent was "to take accountability for my actions."

The court obtained Williams's assent that he understood he had the right to be represented by an attorney but "chose to give that up and represent yourself." The court also confirmed that Williams had a chance to discuss his "thoughts and beliefs and the reasons for why you are doing this" with standby counsel, and noted that standby counsel did not acquiesce in the plea. The deputy district attorney then went over the plea waivers, including Williams's waiver of his right to counsel, and confirmed Williams's understanding that: he would be convicted on both counts; he would be admitting all of the alleged strike priors; on count 2 he would be sentenced to life without the possibility of parole; and on count 1 the sentence would be stayed. Following the waivers, Williams pleaded no contest to both counts and admitted the prior strike convictions. After finding a factual basis, the court accepted the plea and set a date for sentencing.

2. *Williams's Motion to Withdraw His Plea*

Prior to sentencing, Williams filed a motion to withdraw his no contest plea and to enter a plea of not guilty. Among other grounds, the motion cited the language of section 1018, which provides that "[n]o plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant's counsel." (§ 1018.) In a supporting declaration, Williams stated that, when he entered his plea of no contest, he was "under a 'spiritual influence' to plead guilty," and that "the state's evidence indicate self-defense and I could easily obtain my acquittal."

The district attorney filed a response that noted Williams faced a maximum sentence of life without the possibility of parole

on count 2, and that, "[a]s such, there is little doubt that the provisions of Penal Code section 1018 apply to Defendant's plea to Count Two." The response observed that the court "attempted, and possibly succeeded, in meeting the requirements of Penal Code section 1018 in regards Count Two by appointing counsel for consultation with Defendant," but stated that, "in an abundance of caution related to those provisions [of section 1018], the people do not oppose this Court allowing Defendant to withdraw his plea as to Count Two." However, the district attorney opposed the motion to withdraw Williams's plea as to count 1.

At the hearing on the motion, the district attorney again stated that he had "doubts if this went to a Court of Appeal whether a Court of Appeal would uphold his plea to count 2 as a pro per, the LWOP charge." In response, the court stated that it was "conflicted as to how [section] 1018 could bar [Williams] from, No. 1, exercising his constitutional rights to represent himself and not being able to accept the deal from the People." The court said that its research showed that section 1018 "is silent as far as the situation where a pro per can accept a plea to LWOP or death."

The court initially indicated that, in view of the district attorney's position, the court was willing to allow Williams to withdraw his plea to count 2, dismiss that count, and sentence him on count 1. However, the district attorney was not willing to dismiss count 2. After some additional colloquy about the ramifications of that decision, the court denied Williams's motion in its entirety. The court imposed a sentence of life without the possibility of parole on count 2. The court announced a sentence of 60 years to life on count 1, which the court ordered stayed.

Williams filed a notice of appeal at the conclusion of the hearing, and the court granted a certificate of probable cause for the appeal.

DISCUSSION

1. *Williams's No Contest Plea to Count 2 is Invalid Under Section 1018*

Contrary to the trial court's conclusion, section 1018 is quite clear on the requirements for accepting a plea from a defendant who is charged with an offense punishable by LWOP. In such a case, as in a capital case, no plea may be received from a defendant "who does not appear with counsel." (§ 1018.) Even for represented defendants, section 1018 prohibits accepting a plea "without the consent of the defendant's counsel."

Williams was representing himself when the trial court accepted his plea. Moreover, even if the consent of standby counsel could be considered sufficient under section 1018 (an issue we do not reach), the plea here did not comply with the requirements of that section, as Williams's standby counsel did not consent to the plea.

Respondent argues that the "statutory requirement that counsel consent to a defendant's no contest plea in a life imprisonment case violates the constitutional right of self-representation." Respondent points out that section 1018 predates the United States Supreme Court's holding in *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*) that a criminal defendant has a right under the Sixth Amendment to the United States Constitution to conduct his or her own defense.

We reject the argument. Our Supreme Court has already decided that the constitutional right to represent oneself, as interpreted in *Faretta*, does not include a right to enter a plea of

guilty to a capital charge without the consent of counsel in violation of section 1018. (See *People v. Alfaro* (2007) 41 Cal.4th 1277, 1299–1302 (*Alfaro*); *People v. Chadd* (1981) 28 Cal.3d 739, 747–750 (*Chadd*), overruled on other grounds as stated in *Cowan v. Superior Court* (1996) 14 Cal.4th 367, 373–374.) The basis for the court's decision applies with equal force to a plea on a charge that is punishable by life imprisonment without the possibility of parole.

In *Chadd*, the court considered a guilty plea to a capital charge that the trial court had accepted over the objection of the defendant's attorney. The trial court in that case concluded that the plea was permissible under *Faretta* despite section 1018 because it "would be 'tantamount to' relieving [the defendant's] counsel and permitting defendant to actually represent himself." (*Chadd, supra,* 28 Cal.3d at p. 745.) The Attorney General argued that section 1018 should be construed to permit the procedure the trial court followed and, if it were not so construed, section 1018 would be unconstitutional because it would permit counsel to " 'veto' a capital defendant's decision to plead guilty." (*Id.* at p. 747.)

The court rejected the argument. The court first concluded that section 1018 could not be interpreted as the Attorney General suggested, observing that "it is difficult to conceive of a plainer statement of law than the rule of section 1018 that no guilty plea to a capital offense shall be received 'without the consent of the defendant's counsel.' " (*Chadd, supra,* 28 Cal.3d at p. 746.) The court then found that this provision was constitutional. The court agreed that, while "the decision as to how to plead to a criminal charge is personal to the defendant," "the Legislature has the power to regulate, in the public interest,

the manner in which that choice is exercised." (*Id.* at pp. 747–748.) Indeed, the Legislature could prohibit *all* guilty pleas to capital offenses and require that such offenses be proved to the satisfaction of a trier of fact. (*Ibid.*)

Faretta did not change this analysis. The court in *Chadd* noted that, prior to *Faretta,* the United States Supreme Court had recognized in *North Carolina v. Alford* (1970) 400 U.S. 25, 38–39, that "a state in its wisdom could constitutionally prohibit *all* guilty pleas to murder charges and insist that the prosecution prove each such case." (*Chadd, supra,* 28 Cal.3d at pp. 751–752.) The court noted that "[t]here is not the slightest indication in *Faretta* that it is intended to abrogate that rule." (*Id.* at p. 752.) Rather, the court concluded that the holding in *Faretta* was "more modest." (*Id.* at p. 751.) *Faretta* recognized a constitutional right for a defendant to make his or her own "defense" in an adversary trial, but it did not guarantee a defendant's personal right to "make *no* such defense and to have *no* such trial, even when his life is at stake." (*Ibid.*) The state also has an interest in reducing the risk of mistaken judgments in capital cases, and nothing in *Faretta* deprives the state of the right to protect that interest by requiring that counsel consent to a guilty plea. (*Id.* at pp. 751–752; see also *Alfaro, supra*, 41 Cal.4th at pp. 1299–1300 [declining to revisit the holding in *Chadd*].)[3]

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[3] In *People v. Daniels* (2017) 3 Cal.5th 961, the court recently confirmed that "[s]ection 1018 is reflective of the state's interest in reducing the risk of mistaken judgments, an interest that is particularly pronounced in the context of guilty pleas." (See *id.* at p. 983 [self-represented capital defendant's failure to

In *Chadd*, the court also noted that it had already decided the same issue in *People v. Ballentine* (1952) 39 Cal.2d 193 (*Ballentine*). In *Ballentine,* the defendant in a capital case discharged his attorney and entered a guilty plea. On appeal, the Attorney General argued that section 1018 interfered with the right of self-representation based on former article I, section 13 of the California Constitution. Although *Ballentine* was decided before *Faretta*, this state constitutional right was "then deemed to be as broad as that recognized in *Faretta*." (*Chadd, supra,* 28 Cal.3d at pp. 753–754.) The court in *Ballentine* held that, "[a]lthough a defendant has the right to defend himself in person in a criminal prosecution (Const., art. I, § 13), he is not guaranteed the right to plead guilty to a charge of a felony punishable with death." (*Ballentine, supra,* 39 Cal.2d at p. 196.) The court reasoned that, "[n]ot having an absolute right to enter a plea of guilty, the defendant is not deprived of any right by being permitted to enter the plea only if he is represented by counsel." (*Id.* at pp. 196–197.)

This same reasoning supports the constitutionality of the provision in section 1018 that requires counsel's consent to a plea to an LWOP offense. While perhaps not as strong as in capital cases, the state's interest in the accuracy of judgments in LWOP cases is substantial. And, if the state could constitutionally prohibit *any* guilty plea in such cases, it can surely condition such pleas on the consent of counsel.

Respondent argues that section 1018 should be "construed to include the consent of defendant when he is acting as his *own*

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contest any of the prosecution's proof at trial did not amount to a guilty plea in violation of section 1018].)

counsel." The plain language of section 1018 forecloses that argument. Section 1018 clearly differentiates between represented and unrepresented defendants, specifying that no plea to a capital offense shall be received from a defendant "who does not appear with counsel." (§ 1018.) This provision would be nonsensical if a defendant acting as his own counsel were treated no differently than a defendant who has an attorney. As the court noted in *Chadd,* " 'When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.' " (*Chadd, supra,* 28 Cal.3d at p. 746.)

The language of section 1018 also precludes respondent's argument that the requirements of that section should not be applied to Williams because he is sophisticated and knowingly waived his right to counsel. Section 1018 does not create an exception for sophisticated defendants or knowing waivers.

The court rejected an identical argument in *Chadd*. The Attorney General in that case argued that section 1018 should be read "to permit a capital defendant to discharge his attorney and plead guilty if he knowingly, voluntarily, and openly waives his right to counsel." (*Chadd, supra,* 28 Cal.3d at p. 747.) The court noted that this proposal would make "a major portion of the statute redundant." (*Ibid.*) Section 1018 "expressly authorizes *noncapital* defendants" to enter a guilty plea if he or she knowingly waives the right to counsel.[4] The construction that

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[4] The portion of section 1018 referring to such defendants states that "[n]o plea of guilty of a felony for which the maximum punishment is *not* death or life imprisonment without the possibility of parole shall be accepted from any defendant who does not appear with counsel unless the court shall first fully inform him or her of the right to counsel and unless the court

the Attorney General suggested would "obliterate the Legislature's careful distinction between capital and noncapital cases, and render largely superfluous its special provision for the former. Such a construction would be manifestly improper." (*Ibid.,* citing *J. R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 36–37.) The same statutory analysis applies to the distinction between defendants charged with LWOP offenses and those charged with other felonies.

This conclusion is not affected by the fact that Williams had an opportunity to consult with standby counsel. Section 1018 is not satisfied by consultation with a lawyer only, but rather requires counsel's *consent.* Even if Baker as standby counsel could be viewed as William's "counsel" for purposes of providing consent under section 1018 (which, again, we do not consider), he did not provide such consent. The trial court therefore should have granted Williams's motion to withdraw his plea to count 2.

2. *Williams's Plea to Count 1 Also Cannot Stand*

Respondent argues that, even if Williams's plea to count 2 is invalid, section 1018's requirement of consent by counsel does not apply to the murder charge in count 1, and Williams therefore should not be permitted to withdraw his no contest plea to that count. Respondent is correct that the representation and consent requirements of section 1018 do not independently apply to count 1. However, under the circumstances of this case Williams must be permitted to withdraw his plea to both counts.

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shall find that the defendant understands the right to counsel and freely waives it, and then only if the defendant has expressly stated in open court, to the court, that he or she does not wish to be represented by counsel." (§ 1018, italics added.)

Both counts concerned the same conduct, i.e., Williams's alleged murder of his cell mate. If the no contest plea to count 1 were to stand, it would effectively establish the offense charged in count 2. Such a result would undermine the purpose of section 1018 by relieving the prosecution of the need to prove count 2.

In both *Chadd* and *Ballentine,* our Supreme Court held that the defendants should be permitted to withdraw their pleas to noncapital counts concerning crimes that they committed in the course of their capital offense. The court reasoned that, otherwise, most of the prosecution's burden to prove the circumstances necessary to establish the capital offenses would be removed. (See *Chadd, supra,* 28 Cal.3d at pp. 755–756; *Ballentine, supra,* 39 Cal.2d at p. 197.)

The same logic applies here. If Williams's admission to count 1 is permitted to stand, it would relieve the prosecution from the need to establish the facts necessary to convict Williams on count 2. The judgment as a whole must therefore be reversed.

DISPOSITION

The judgment is reversed, and the matter is remanded with directions to the trial court to strike from its records Williams's plea of no contest to counts 1 and 2 and his admissions to prior strikes, and for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.