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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ADRIAN JUAN LLOYD, Defendant and Appellant.	B288139 (Los Angeles County Super. Ct. No. MA072159)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher G. Estes, Judge. Affirmed.

Jennifer A. Mannix, 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, Assistant Attorney General, David E. Madeo and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Adrian Juan Lloyd (defendant) appeals from an order denying his motion to withdraw his plea of no contest to attempted second degree murder. He contends that the trial court abused its discretion in denying the motion, and that his plea was not voluntary and intelligent. We find no merit to defendant's contentions, and affirm the judgment.

BACKGROUND

Defendant was charged with assault with a deadly weapon while confined in a state prison, in violation of Penal Code section 4501, subdivision (a),[1] and with custodial possession of a weapon, in violation of section 4502, subdivision (a). In addition, it was alleged that defendant had three prior serious or violent felonies under sections 667, subdivisions (b) through (j), and 1170.12 (the Three Strikes law). As to count 2, the same prior convictions were alleged under section 667, subdivision (a)(1).

On the date set for preliminary hearing defendant entered into a plea agreement whereby he agreed to enter a plea of no contest to a new and added charge of attempted second degree murder, in violation of sections 664 and 187. In return, defendant would not be asked to admit the prior convictions, the remaining charges and special allegations would be dismissed, and defendant would be sentenced to the low term of five years, to run consecutively to any other prison term he was presently serving. Defendant signed Judicial Council form CR-101, entitled "Plea Form, With Explanations and Waiver of Rights -- Felony." He initialed the terms of the agreement, the advisements of the consequences of his plea and his rights, including the right to a jury trial and to confront his accusers and the privilege against

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

compulsory self-incrimination. Defendant also initialed waivers of such rights and signed the statement which read as follows:

> "I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea."

Defendant's attorney signed the statement under the paragraph on the plea form acknowledging that he had "explained each of the items in the form, including the defendant's constitutional and statutory rights . . . . I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge . . . ."

In addition, the trial court acknowledged defendant's desire to have mental health treatment at Atascadero State Hospital, and told defendant that though the court would recommend such treatment, the decision where to house him was under the control of the Department of Corrections. Defendant orally confirmed that he understood. Defendant also orally confirmed that no promises had been made to get him to plead no contest, that he was doing so freely and voluntarily because he felt it was in his best interest, that no one had forced him or threatened him to get him to plead no contest, and that he understood that a no contest plea had the same effect as a guilty plea. Defendant confirmed that the signature and the initials on the plea form were his. Defendant stated that the form was read to him, that he

understood what was read to him, and that his lawyer explained his constitutional rights, the consequences of his plea, and that he had adequate time to ask any questions of his lawyer, to talk about the case, and to discuss any possible defenses he might have. Defendant also orally confirmed that he understood that the five year term would be consecutive to the time he was currently serving, that this conviction would be what is known as a "strike" and could be used to enhance any future sentence.

Defendant then pled no contest to count 3, his counsel joining in the waivers, concurring in the plea, and stipulating to a factual basis as set forth in the police reports. The police reports are not part of the record, but defendant and respondent agree that the facts underlying the crime as summarized in the probation report were: defendant punched another inmate while defendant was serving a life sentence in prison, that he and the other inmate fought until separated by guards, and that defendant admitted that he had injured the other inmate during the fight with the sharpened toothbrush that the guards found on him.

The court expressly found the plea to be knowing, voluntary and intelligent, and accepted it.

On February 6, 2018, the date set for sentencing, defendant made a motion to withdraw his plea. Defense counsel told the court that the plea bargain was the result of intensive negotiations with the prosecutor, that counsel had explained the offer to defendant, and defendant indicated that he was happy with the deal, but once back in his cell he changed his mind.

The court allowed defendant to explain his request. Defendant said:

> "Here' really what happened. I read it, and I heard everything when he said five years, and although he said attempted murder, I was just happy to hear the five years. Sometimes I think slow.

> Sometimes I'm slow on the uptake. So on the bus ride back, I really started thinking about it. Then when I got to my cell, I said no way on earth can this happen. Over 30 years ago, in two separate incidents, I stabbed two people. I got two years each time for the knife. Where is attempted murder? If it was attempted murder -- I do get angry -- I would have kept trying to do what I was doing. So I'm like, I don't know what you all got going on, what kind of trickery, but no, I withdraw that plea. It -- to me, it's not based in reality. I only attempted to just -- not attempted -- I stabbed the guy. I didn't attempt to murder him. Murder wasn't my intention. So of course I withdraw that ridiculous plea that I did agree to, like I said. I heard five years. I was like, whoo-hee, I was happy, so -- but no. Attempted murder, no way. If I had attempted to murder him, and y'all had said five years, I would be like, okay, I tried to kill the guy; I better take five years. No way on earth am I taking -- agreeing to no -- that stuff. No."

Once defendant acknowledged that there was no other basis for his request, the trial court summarized the contents of the plea form and the oral advisements given in open court, along with defendant's responses. When asked whether he disagreed with anything that took place at the time of his plea, defendant replied yes, and explained that his attorney "read part of it, he -- not read all of it, but he read -- he just told me to write -- 'Do you agree to this?' And I said, 'Yeah, I agree.' And he said they are going to get you for the attempted murder, the five years and all that, and he just brief -- briefed me through there, but no, I didn't actually read them, so I'm just making that point." The trial court asked defense counsel whether "the disposition, the nature of the charge, the attempted murder, and the five years was part of what you discussed with him as it was detailed in you

discussion, but as well as in the plea transcript?" Counsel replied in the affirmative.

The trial court then denied the motion and explained the ruling as follows:

> "For the court to allow the plea to be set aside, there must be a good cause finding made, and the burden is with the defendant to demonstrate that the plea was entered as a result of mistake, ignorance, inadvertence, or some other factor that demonstrates overreaching. And the court sees that he was advised of his constitutional rights, the consequences, immigration consequences; the court does not see that there is any good cause basis to grant [defendant's] request. In fact, it appears to be, in essence, a change of . . . mind . . . which is something that [defendant] can bring to the court's attention, but does not rise to the level of a good cause basis to allow him to withdraw his plea."

The defendant was then sentenced to the agreed upon five years in prison, consecutive to any current sentence. The court ordered defendant to pay mandatory minimum fines and fees, and recommended that defendant be considered for housing at Atascadero and be provided mental health treatment.

Defendant obtained a certificate of probable cause and filed a timely notice of appeal from the order.

DISCUSSION

Defendant contends that the trial court abused its discretion in denying his motion to withdraw his no contest plea.

"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. . . . This section shall be liberally construed to effect these objects and to promote justice." (§ 1018.)

"The defendant has the burden to show, by clear and convincing evidence, that there is good cause for withdrawal of his or her guilty plea. [Citations.] 'A plea may not be withdrawn simply because the defendant has changed his . . . mind.' [Citation.] The decision to grant or deny a motion to withdraw a guilty plea is left to the sound discretion of the trial court. [Citations.] 'A denial of the motion will not be disturbed on appeal absent a showing the court has abused its discretion.' [Citations.] 'Moreover, a reviewing court must adopt the trial court's factual findings if substantial evidence supports them.' [Citation.] [¶] To establish good cause to withdraw a guilty plea, the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress. [Citation.] The defendant must also show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake. [Citation.]" (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1415-1416.)

On appeal, it is the defendant's burden to make a clear showing of abuse of discretion. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.) No abuse of discretion will be found unless it appears that the trial court exercised its discretion in an arbitrary, capricious or patently absurd manner, and that a manifest miscarriage of justice resulted. (*Ibid*.)

Defendant first contends that he presented clear and convincing evidence that his free and clear judgment and his ability to understand the nature and consequences of the plea were overcome by his "slow" thinking, his "diagnosed mental illness," his "fixation" on the agreed upon sentence, and his attorney's rushed summary of the plea form and explanation of the charges.

"'Clear and convincing evidence'" means "'evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability*.' [Citation.]" (*People v. Juhasz* (2013) 220 Cal.App.4th 133, 139.)

We do not agree that defendant's explanation to the court leaves no substantial doubt that defendant did not understand the nature and consequences of the plea. The record does not include defendant's mental health diagnosis, and there is no evidence regarding the effect of his unspecified mental illness on the speed of his thought processes or his ability to understand court proceedings. Moreover, persuasive contradictory evidence is found in defendant's representations to the court at the time his plea was entered, that his attorney summarized the plea form, that defendant did in fact understand what was read to him, and that he had been given adequate time to discuss the case and possible defenses with his attorney.

In support of his motion to withdraw the plea defendant told the court that the offer of five years made him so happy that he did not focus on the intent element of murder. Defendant claimed that after more thought he believed that a murder charge was inappropriate because he had not specifically intended to kill his victim. As defendant argues here, "[h]e felt tricked into accepting a plea offer he did not believe was supported by the facts of his offense." In essence, the basis for defendant's motion to withdraw his no contest plea was an attack on the *factual basis* for the plea.

A trial court must find that there is a factual basis for a guilty plea, but the factual basis need only raise a prima facie case to support the admitted charge. (*People v. Palmer* (2013) 58

Cal.4th 110, 119.) "'[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court's acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion.' [Citation.]" (*Id*. at pp. 118-119.) No abuse of discretion is shown where, as here, the record of the plea shows that both counsel stipulated to a factual basis for the plea, that defendant affirmed that he had discussed his rights, the case, and any defenses with counsel, that he understood them, and at no time did he protest his factual innocence. (*Ibid*.)

In seeking to withdraw his plea, defendant did not claim that the stipulated facts did not amount to a prima facie case of attempted second degree murder, but simply decided that he no longer wanted to stipulate to them. We agree with the trial court that "[i]n fact, it appears to be, in essence, a change of . . . mind. . . which . . . does not rise to the level of a good cause basis to allow him to withdraw his plea." As "'[a] plea may not be withdrawn simply because the defendant has changed his [or her] mind,'" defendant has not met his burden to show that the ruling was an abuse of discretion. (*People v. Breslin, supra,* 205 Cal.App.4th at p. 1416.)

Furthermore, defendant has not met his burden to show prejudice as he has failed to show that he would not have accepted the plea bargain had it not been for the alleged mistake. (See *People v. Breslin, supra*, 205 Cal.App.4th at p. 1416.) In fact defendant has never claimed that he would have rejected the offer and gone to trial if he had understood that an element of attempted murder was an intent to kill. As respondent notes, if defendant had been convicted of the original charges, with prior strikes alleged pursuant to section 1170.12, plus five years under section 667, subdivision (a), he would likely have spent the rest of

his natural life in prison. Defendant has never indicated that he would take that risk and give up an agreed five-year term, merely for a potential finding that he intended only to assault but not kill the other inmate with a deadly weapon.

Defendant also contends that the record demonstrates that his plea was not knowing and intelligent, despite the explicit advisements and waivers. The record shows that defendant was given the required advisements and explicitly waived, in writing, his privilege against compulsory self-incrimination, his right to a jury trial, and his right to confront his accusers. (See *People v. Mosby* (2004) 33 Cal.4th 353, 356; *Boykin v. Alabama* (1969) 395 U.S. 238, 243.) Defendant orally represented to the court that the written advisements and waivers were read to him, that he understood them, that he was entering his plea freely and voluntarily, not under force or threat. Such facts demonstrate that defendant's plea was voluntary and intelligent. (*Mosby*, at p. 356.) Where advisements and waivers are omitted or incomplete, reversal is required unless "'the record affirmatively shows that [the guilty plea] is voluntary and intelligent under the totality of the circumstances.' [Citations.]" (*People v. Cross* (2015) 61 Cal.4th 164, 171.)

Defendant's argument is based upon the same facts urged and rejected as a ground in the trial court for withdrawal of the no contest plea: his thinking was slow; he felt rushed; he suffers from unspecified mental illness; he felt tricked. We agree with trial court that considering the proper advisements and his representations at the time of the plea, defendant understood his rights and voluntarily waived them, but simply changed his mind. We conclude that the totality of the circumstances demonstrates that defendant's plea was knowing, voluntary and intelligent.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST