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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.

TROY JAMES AGEE,

Defendant and Appellant.

B287685

(Los Angeles County
Super. Ct. No. MA069184)

APPEAL from orders of the Superior Court of Los Angeles County, Lisa M. Chung, Judge. Affirmed.

Lillian Hamrick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Troy James Agee appeals from postjudgment orders denying his motion to withdraw a plea of no contest entered as part of a “package deal” in which his wife, Brenda Joyce Pugh, received a suspended sentence and finding him in violation of probation imposed as part of that negotiated plea. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Original Charges and Plea Agreement

Agee was charged in an information on October 19, 2016 with four counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), two counts of misdemeanor shoplifting (Pen. Code, § 459.5) and five counts of conspiracy to commit shoplifting (Pen. Code, §§ 182, subd. (a)(1), 459.5). The information specially alleged Agee had served six prior separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)). Pugh was charged as a codefendant in two of the conspiracy counts.

On October 26, 2016, over his counsel’s objection, Agee agreed to plead no contest to four counts of second degree robbery and two counts of shoplifting and to admit the six prior prison term enhancements. Agee also agreed to plead no contest to transportation or sale of a controlled substance (Health & Saf. Code, § 11379, subd. (a)), charged in an unrelated case. Pursuant to the agreement negotiated by the prosecutor and Agee, the two cases would be consolidated for sentencing, and the trial court would impose an aggregate state prison sentence of 16 years with execution of sentence suspended. As part of a package deal Pugh agreed to plead no contest to two counts of conspiracy in return for a suspended sentence with three years of probation.

Agee’s counsel explained to the trial court that she had advised Agee not to agree to this proposal and instead to offer to plead with a negotiated state prison sentence of four to six years.

Agee rejected her advice because he wanted to be released sooner. Counsel also informed the court that Agee understood the risks and consequences of accepting the prosecutor's plea offer.

At the time he entered his plea, Agee was advised of his constitutional rights and the nature and consequences of the plea, which he stated he understood. Agee's counsel declined to join in the plea and admissions. The trial court confirmed with Agee that he understood his counsel's decision not to join in the plea and her reasons for that decision. The trial court expressly found Agee's waivers, plea and admissions were voluntary, knowing and intelligent.

In accordance with the negotiated agreement, the trial court sentenced Agee to an aggregate state prison term of 16 years, suspended execution of sentence and placed him on five years of formal probation on condition he serve 365 days in county jail and pay victim restitution. The court imposed statutory fines, fees and assessments and awarded Agee 150 days of presentence custody credit. The remaining counts were dismissed on the People's motion. In accordance with the negotiated plea agreement, the trial court suspended imposition of Pugh's sentence and placed her on three years of probation.

2. The Motion To Withdraw The Plea and the Probation Violation

On June 23, 2017 the trial court summarily revoked Agee's probation, remanded him into custody and scheduled a probation violation hearing after new charges, including a new robbery charge, were filed against him.

On November 17, 2017, represented by counsel, Agee moved to withdraw the plea he had entered the preceding year in the robbery/shoplifting case. At the hearing on the motion on

November 20, 2017, Agee testified he had felt compelled to accept the prosecutor's offer of a package agreement because Pugh was ill at the time and would not have been able to endure a jury trial or harsher punishment if she were convicted.

The trial court stated the motion was untimely and appeared to have been prompted solely by Agee's new criminal case. Nonetheless, the court reviewed the transcript of the plea hearing and ruled Agee had failed to establish good cause to withdraw the plea, noting the significant state prison sentence he potentially faced if he had gone to trial.

After the motion to withdraw his plea was denied, Agree agreed to admit the probation violations in the two prior cases, to plead no contest to the new robbery charge and to admit he had suffered a prior strike conviction in connection with the new case. As part of the negotiated resolution, it was agreed Agee would be sentenced to an additional two-year term (one-third the middle term for second degree robbery, doubled as a second strike) to be served consecutively to the 16-year sentence previously imposed and suspended in the earlier cases.

Prior to entering his plea to the new robbery charge and admission of the prior strike, Agee was advised of his constitutional rights and the nature and consequences of the plea and admission, which he stated he understood. Counsel joined in the plea and admission. The trial court expressly found Agee's waivers, plea and admission were voluntary, knowing and intelligent. Agee also waived his right to a probation violation hearing and all related rights and admitted he had violated probation in the robbery/shoplifting and controlled substance cases by virtue of his plea of no contest in the new case. Counsel joined in the admission, and the court found the waivers and

admission had been entered into freely and voluntarily. The court sentenced Agee to an aggregate state prison term of 18 years, imposed statutory fines, fees and assessments and awarded him 541 days of presentence custody credits.

Agee filed a timely notice of appeal from the November 20, 2017 orders denying his motion to withdraw his October 2016 plea and finding him in violation of probation in the robbery/shoplifting and controlled substance cases. In his request for a certificate of probable cause, Agee asserted his plea had not been entered voluntarily. The trial court issued a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Agee on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On June 4, 2017 we advised Agee he had 30 days to submit any contentions or issues he wanted us to consider.

On June 27, 2018 Agee filed a two-page hand-printed supplemental brief in which he argues, as he had in the trial court, that he felt pressured to plead no contest in October 2016 because he wanted to spare his wife the possibility of incarceration following a jury trial. Agee also asserts, without any elaboration, that he did not commit the new robbery that was charged in June 2017 and the court was not justified in finding he had violated his probation.

We have examined the record and are satisfied that appellate attorney for Agee 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.)

When a defendant was represented by counsel at the time of the plea, the trial court may, but is not required to, grant the request to withdraw the plea on a sufficient showing of good cause. (Pen. Code, § 1018.) “Good cause” means mistake, ignorance, fraud, duress or any other factor that overcame the defendant’s exercise of free judgment. (*People v. Alexander* (2015) 233 Cal.App.4th 313, 318; see *Boykin v. Alabama* (1969) 395 U.S. 238, 243 [89 S.Ct. 1709, 23 L.Ed.2d 274] [guilty pleas obtained through coercion, terror, inducement or threat are involuntary and violate due process].)

The decision whether to grant a motion to withdraw a plea of guilty or no contest is within the discretion of the trial court “and is final unless the defendant can show a clear abuse of that discretion.” (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254; accord, *People v. Superior Court* (1974) 11 Cal.3d 793, 795.) “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.” (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146.)

Under the circumstances here, the trial court’s denial of Agee’s motion to withdraw his plea was well within its discretion: A negotiated “package deal” plea agreement is not intrinsically coercive. (*In re Ibarra* (1983) 34 Cal.3d 277, 283-284, disapproved on another ground in *People v. Howard* (1992) 1 Cal.4th 1132, 1175-1178; see *People v. Sandoval* (2006) 140 Cal.App.4th 111, 124-125.) Agee never alleged the inducement for the October 2016 plea was improper or that the prosecutor misrepresented the facts. He did not claim the case against him or Pugh was not factually based or brought in bad faith, nor did he contend the sentence proposed for him was disproportionate to his culpability. His only argument that the

plea was induced by coercion arises from his relationship with Pugh and his concern for her well-being. Far more is necessary for us to conclude the trial court abused its discretion in denying Agee's motion. The record fully supports the trial court's conclusion that Agee made a rational and voluntary choice, based on his own interests, not simply those of Pugh, when he accepted the plea agreement.

As for the passing challenge to his admission that he had violated his probation by committing a new felony offense, even with a certificate of probable cause, Agee is precluded from raising issues that go to the determination of guilt or innocence, that is, whether he in fact did violate his probation. "Issues cognizable on an appeal following a guilty plea are limited to issues based on 'reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings' resulting in the plea. [Citations.] The issuance of a certificate of probable cause pursuant to [Penal Code] section 1237.5 does not operate to expand the grounds upon which an appeal may be taken as that section relates only to the 'procedure in perfecting an appeal from a judgment based on a plea of guilty.'" (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895; accord, *In re Troy Z.* (1992) 3 Cal.4th 1170, 1180-1181; see *People v. Gonzalez* (1993) 13 Cal.App.4th 707, 713.)

DISPOSITION

The orders denying the motion to withdraw plea and finding Agee in violation of probation are affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.