Filed 10/20/16 P. v. Sanchez CA2/2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOSE SANCHEZ, Defendant and Appellant.	B271180 (Los Angeles County Super. Ct. No. TA136152)

THE COURT:*

Jose Sanchez (defendant) pled guilty to sex crimes involving three children and pursuant to a plea agreement was sentenced to a term of 26 years in state prison. Defendant appeals from the judgment entered after the trial court denied his motion to withdraw his plea which he filed pursuant to Penal Code section 1018.[1]

PROCEDURAL BACKGROUND

The facts of the underlying offenses are not relevant to the issues raised in this appeal. Accordingly we will focus on the procedural events in this case to provide background for our discussion which follows. We note

---

* ASHMANN-GERST, Acting P. J., CHAVEZ, J., HOFFSTADT, J.

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

only that, following a preliminary hearing at which two of the victims testified, the amended information charged defendant with three counts of aggravated sexual assault of a child by sodomy (§ 269, subd. (a)(3)); three counts of forcible lewd acts upon a child (§ 288, subd. (b)(1)); two counts of continuous sexual conduct with a minor under age 14 (§ 288.5, subd. (a)); and one count of committing a lewd act with a child (§ 288, subd. (a)). Defendant initially pled not guilty.

On October 14, 2015, defendant who was represented by private counsel, Jesse N. Robles and Adrian Uribe, requested additional time to explain the People's offer of a plea agreement (26 years' incarceration), to his family.

On October 20, 2015, defendant pled guilty to two counts of continuous sexual conduct with a minor under age 14 and one count of committing a lewd act with a child. The remaining counts were dismissed. The trial court accepted the plea, finding it was knowing, voluntary, and intelligent, and finding it had a factual basis. The court sentenced defendant to prison for 26 years as agreed in his plea bargain.

On November 12, 2015, newly retained counsel for defendant filed a motion to withdraw the plea on the grounds that (1) defendant had not sufficiently understood the plea proceedings because English is his second language, (2) defendant was never made aware of any of the direct consequences of accepting the plea—in particular, that he was required to register as a sex offender,[2] (3) Robles and Uribe did not inform him of the admissible evidence the People could present and told him he had to accept the plea because his retained experts were not helpful, and (4) Robles and Uribe told him that they would not represent him at trial leaving him without representation.

On January 26, 2016, at the outset of the hearing on the motion, the trial court noted that the motion to withdraw the plea pursuant to section 1018 was untimely because judgment was entered on the date that defendant pled. Instead, the court construed the motion as a petition for a writ of error

---

[2] This was not included in defendant's motion or declaration but the court allowed counsel to address it at the hearing on the motion.

coram nobis which if successful would vacate the judgment. The court also noted for the record that it had conducted the preliminary hearing in this matter, as well as all other proceedings up to that point, and was familiar with the case.

Defendant testified with the assistance of a Spanish language interpreter that Robles and Uribe (1) told him that he had to accept the plea, (2) did not keep him informed of developments in his case, (3) refused to assist him if the case went to trial, and (4) never told him he could ask for an interpreter even though he did not understand English. On cross-examination, the People questioned defendant regarding his postarrest interview with the police which was conducted in English. Robles testified that he was fluent in Spanish and began communicating with defendant in Spanish. He told defendant he could have an interpreter but defendant responded that he felt more comfortable communicating in English. At no time did defendant state that he did not understand what was being said in court. Robles also testified that he and his cocounsel Uribe, discussed defendant's case with him before and after the preliminary hearing, met with defendant in custody numerous times to discuss the case and prepare for trial, were ready for trial on October 20, and never told defendant that they would not represent him at trial.

The trial court found that defendant failed to request an interpreter or let anyone know he needed one; the requirement to register as a sex offender was explained to him in detail and was reflected on the plea transcript; and his claim that he did not know he was entitled to an attorney at all proceedings was not credible because a public defender had been appointed to represent him before he retained private counsel. Furthermore, the court found credible Robles's testimony that he kept defendant informed at all times of the proceedings and was prepared to go to trial. The motion (writ of error *coram nobis*) was denied and the sentence of 26 years remained in effect. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant's counsel who was retained by defendant to file the motion to withdraw the plea has now filed a brief raising no issues and seeking our independent review of the record, pursuant to *People v. Wende* (1979)

25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. On June 6, 2016, we advised defendant in writing that he had 30 days to submit any contentions or issues he wished us to consider. Defendant submitted a two-page letter brief written in Spanish[3] in which he argues, that: (1) he was never told he could have an interpreter; (2) his retained counsel "forced" him to accept the 26-year sentence and did not allow him to speak; (3) he was "never told . . . that [he] could get help from another attorney or take one from the county"; and (4) he never fully understood the charges and evidence against him. Defendant also denies he committed the crimes he was accused of, that the People had no evidence against him, and that his retained counsel were ineffective.

The denial of a petition for a writ of error *coram nobis* is appealable. (§ 1237; *People v. Kim* (2009) 45 Cal.4th 1078, 1096.) A writ of error *coram nobis* permits the court which rendered judgment to reconsider it and give relief from errors of fact. (*Kim*, at p. 1091.) The writ will issue only when the petitioner can establish three elements: (1) that some fact existed which, without his fault or negligence, was not presented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know and could not have with due diligence discovered the facts upon which he relies any sooner than the point at which he petitioned for the writ. (*People v. Soriano* (1987) 194 Cal.App.3d 1470, 1474 (*Soriano*).) We review the trial court's ruling on a petition for a writ of error *coram nobis* for abuse of discretion.[4] (*People v. McElwee* (2005) 128 Cal.App.4th 1348, 1352.)

After reviewing the entire record, we conclude the trial court did not abuse its discretion in denying defendant's petition for a writ of error *coram nobis*. To begin, the court conducted a thorough evidentiary hearing on

---

[3] This court obtained a certified translation of defendant's letter brief.

[4] An abuse of discretion standard is also employed on motions to vacate a judgment under section 1016.5 for failure to advise a defendant of the immigration consequences of a plea.

defendant's petition. That hearing revealed no basis for relief. During the plea colloquy, defendant always responded appropriately to questions posed in English either by the court or the People, and never requested an interpreter at any time or indicated he had a problem understanding the proceedings. Furthermore, as the court indicated, even if it was true that defendant had some difficulty understanding English, that was a fact known to him at the time, and he was the only one who could bring that fact to the court's attention. To prevail on a writ of error *coram nobis* the new "fact" upon which relief is sought must have been unknown to defendant. Defendant's other claims of error contending that his plea was obtained by coercion, duress and fraud, similarly fail for the reasons stated by the trial court.

We also see no abuse of discretion with respect to defendant's various ineffectiveness of counsel claims. Procedurally, such claims are outside the reach of the writ of error *coram nobis*, which corrects errors of *fact*—not errors of *law* such as the ineffective assistance of counsel. (*Soriano*, *supra*, 194 Cal.App.3d at p. 1477.) Even if this procedural hurdle did not exist, a practical one does: Ineffective assistance of counsel claims often require proof of matters outside the trial record, and defendant has only introduced extra-record evidence as to *some* of his claims of ineffectiveness. As to those claims, we agree with the trial court that defendant has not carried his burden of demonstrating either deficient performance or prejudice. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687.) As to the claims of ineffective assistance for which defendant has not adduced extra-record evidence, we lack the record to evaluate them; defendant's remedy for those claims, if any, is a petition for a writ of habeas corpus.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.