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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.

GARY KOUYOUMDJIAN,

Defendant and Appellant.

B291599

(Los Angeles County
Super. Ct. No. GA051886,
LA040824, LA042253)

APPEAL from an order of the Superior Court of Los Angeles County. Martin L. Herscovitz, Judge. Reversed and remanded.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and Paul S. Thies, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

Gary Kouyoumdjian (defendant) pled no contest to four different offenses in three different cases in 2003—namely, two counts of possessing cocaine base (Health & Saf. Code, § 11351.5), one count of manufacturing methamphetamine (*id.*, § 11379.6), and one count of being a felon in possession of a firearm (former Pen. Code, § 12021, subd. (a)(1)). In a consolidated sentencing proceeding in February 2004, defendant was sentenced to a total of five years in prison.

In May 2018, defendant—while acting pro se—filed a petition seeking to vacate his convictions pursuant to Penal Code sections 1473.7 and 1016.5 on the ground that he did not understand, and was not properly advised of, the possible immigration consequences of his pleas by his attorney or by the trial court (to the extent advisements are mandated by Penal Code section 1016.5). Among other things, section 1473.7 authorizes a “person who is no longer in criminal custody” to petition to vacate prior convictions due to “prejudicial error damaging the [person’s] ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea . . .” (Pen. Code, § 1473.7, subd. (a)(1).)

The court set the matter for a hearing on July 3, 2018. Without defendant being present and without appointing him counsel, the court denied his petition.

Defendant now appeals. Among other things, he argues that the trial court erred in holding a hearing in his absence and without appointing him counsel. As the People concede, defendant is right. At the time of the July 2018 hearing, section 1473.7 expressly provided that “[a]ll motions shall be entitled to a hearing” unless the moving party requests otherwise, that party’s

counsel is present and the court finds “good cause as to why the moving party cannot be present.” (§ 1473.7, subd. (d), Stats. 2016, ch. 739 (A.B. 813), § 1, eff. Jan. 1, 2017.) Those conditions were not met in this case, and their absence mandates reversal and remand for a new hearing. (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 978.) On remand, the court is to assess whether defendant’s petition “state[s] a prima facie case for entitlement to relief under section 1473.7” and, if so, appoint counsel. (*Id.*, at p. 984.)

Defendant urges us to reach the merits of his petition, but we decline to do so because his absence and the absence of potential counsel have skewed the record.

DISPOSITION

The order denying defendant's section 1473.7 motion to vacate his convictions is reversed, and the matter remanded for evaluation of whether to appoint counsel.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ