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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. GABRIEL PIZANO CAMPOS, Defendant and Appellant.	E042335 (Super.Ct.No. INF052444) OPINION
In re GABRIEL PIZANO CAMPOS, on Habeas Corpus.	E044446

APPEAL from the Superior Court of Riverside County. John J. Ryan, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Petition denied.

Rebecca P. Jones, under appointment by the Court of Appeal, for Defendant and Appellant and Petitioner.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Barry Carlton, Supervising Deputy Attorney General, and Sabrina Y. Lane-Erwin, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury found defendant guilty of burglary (Pen. Code, § 459), receiving stolen property (Pen. Code, § 496, subd. (a)), and resisting arrest (Pen. Code, § 148, subd. (a)(1)). Defendant pled guilty to possessing a hypodermic needle. (Bus. & Prof. Code, § 4140.) The court found true the allegations that defendant suffered two prior convictions that qualified both as prior strike convictions (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)) and prior serious felonies convictions (Pen. Code, § 667, subd. (a)). The court sentenced defendant to state prison for an indeterminate term of 35 years to life. On appeal, defendant contends the trial court erred by denying his motion to represent himself.

In a petition for writ of habeas corpus, petitioner contends he was denied effective assistance of counsel. We affirm the judgment and deny the petition.

FACTS

A. Facts Related to the Crimes

Maria lived in a mobilehome park in Thermal. Maria's neighbors were the Aceves family. On October 24, 2005, Maria saw defendant sitting in front of the

Aceveses' trailer. Maria knew that the Aceves family members were not home that day. Maria saw defendant attempt to enter the Aceveses' trailer through a window; however, he was unsuccessful and then "went around the trailer." Maria went to another neighbor's house and asked the neighbor's son to call the police because she thought defendant was trying to steal property belonging to the Aceves family. After calling 911, Maria and her neighbors went outside.

Maria saw defendant exit the Aceveses' trailer. Defendant was carrying a sack "full of things."[1] Defendant told Maria that he had been given permission to go inside the trailer because he was the owner's brother; however, that was not true. Defendant left on a bicycle. Maria and her neighbors followed defendant. When they reached the highway, Maria saw the police. Maria identified defendant to Riverside County Sheriff's Deputy Zamora.

The deputy turned on his vehicle's lights and sirens. Defendant began to peddle faster on his bicycle. Deputy Zamora told defendant to stop, at which point defendant dropped the sack and began running. The deputy overtook defendant, and eventually the deputy and defendant fell to the ground. Defendant did not comply with the deputy's orders. Defendant swung his hands and attempted to "get up and continue to run." Another deputy arrived and defendant was placed in handcuffs.

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[1] When defendant pled guilty to possessing a hypodermic needle (Bus. & Prof. Code, § 4140), the prosecutor indicated that two hypodermic needles were in the sack.

B. Facts Related to Defendant's Trial

1. *Defendant's first motion for self-representation*

On October 2, 2006,[2] defendant made a motion to remove Mr. Quinn as his trial attorney, citing ineffective assistance of counsel. Defendant made many complaints about Mr. Quinn but, essentially, stated that "[t]here [was] a lack of communication between Mr. Quinn and [himself]." "[Defendant did not] know how [Mr. Quinn was] prepared for this trial. [Defendant felt] totally ignorant on what [was] going on because [Mr. Quinn kept him] ignorant on [his] case." Defendant also complained that Mr. Quinn failed to file pretrial motions.

The court noted that Mr. Quinn had spoken to defendant that day and on the previous Friday. The court informed defendant that "[b]efore [it] can fire any attorney [it] need[s] cause, and [defendant was] not close." The court denied defendant's motion to relieve Mr. Quinn as his trial attorney. After that ruling, defendant made a motion to represent himself at trial. The following discourse took place regarding defendant's motion for self-representation:

"The Court: Are you ready to go to trial?

"The Defendant: No, I'm not.

"The Court: Have you ever represented yourself before?

"The Defendant: No, I haven't.

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[2] We note that page 2 of the reporter's transcript incorrectly memorializes the date as November 2, 2006.

"The Court: And did your advisors tell you that magic word too?[3]

"The Defendant: No.

"The Court: If you are not ready for trial, I'm going to deny. That it is untimely. Not that it can't be made late, if you are making it because you don't like my ruling on the *Marsden*.[4] So your motion to represent yourself without being prepared to go to trial, I'm assuming it would take a long time to prepare, and I'm further assuming that you would ask for an attorney after we have a new trial date set, and I'm assuming that attorney would ask for more time to get it started. I have had the master of motions in front of me so I can predict what some people are going to do.

"Mr. Quinn: Your Honor, I do understand the significance here and possible consequences. If he wants to represent himself, I could assist him, but that is probably not appropriate.

"The Court: He knows better than that, that representing himself is not in his best interest. I have seen a few that were successful. Most of the time people step on their own toes, even lawyers representing themselves are known not to do a good job. [¶] That is up to you if you want to represent yourself. The Supreme Court has no problem, and you have the constitutional right under the Sixth Amendment to represent

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3 The court was ostensibly referring to defendant's previous use of the term "*Faretta* rights" in reference to his motion to represent himself. (*Faretta v. California* (1975) 422 U.S. 806.)

4 *People v. Marsden* (1970) 2 Cal.3d 118.

yourself, but you have to make that motion in a reasonable time prior to trial. Here we are at trial.

"The Defendant: Well, we have been in TRC for eight months.[5]

"The Court: I didn't get the case until a couple of days ago.

"The Defendant: I understand that, your Honor.

"The Court: And I saw you on Friday. I think the cases was [*sic*] assigned to me Wednesday or Thursday last week."

The court then denied defendant's motion to represent himself.

2. *Defendant's second motion for self-representation*

During trial, on October 3, 2006,[6] when Mr. Aceves was testifying about the burglary, it became apparent that the wrong address for the Aceveses' trailer had been provided in reports and documents concerning the case. Mr. Aceves testified that he resides "in space 20"; however, the complaint and information referred to "space 25." Mr. Quinn argued that the error affected the defense because he had "been taking photographs of building number 25. Been there three times, and different angles and different thoughts in defending the matter, from the parking structures and windows." The court did not "see how the mistake in [the] address has much to do with [defendant's] case" and permitted the information to be amended by interlineation.

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[5] We infer that "TRC" refers to trial readiness conference.

[6] We note that page 27 of the reporter's transcript incorrectly memorializes the date as November 3, 2007.

On October 4, 2006,[7] defendant again complained of ineffective assistance of counsel and requested to represent himself. Defendant argued that Mr. Quinn was not prepared to provide an adequate defense for him because Mr. Quinn had been "given wrong information" regarding the address of the crime and was not able to fully explore all the possible evidence, such as interviewing the neighbors that also witnessed defendant leave the Aceveses' trailer. Defendant argued that Mr. Quinn needed more time to present an adequate defense. Further, defendant argued that if he were to represent himself, he would also need time to prepare and, essentially, there would be no harm in allowing him to represent himself.

The court concluded that Mr. Quinn was adequately prepared to try defendant's case and that "[t]he issue [was whether they were] going to delay [the] trial any further." The court denied defendant's motion.

After the trial concluded, defendant made a motion for a new trial based upon the court's denial of his motion for self-representation. The court denied defendant's motion for a new trial.

DISCUSSION

A. Appeal

Defendant contends the trial court erred by denying his motion to represent himself because his request was timely. We disagree.

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[7] We note that page 124 of the reporter's transcript incorrectly memorializes the date as November 4, 2006.

A defendant in a criminal matter "has a constitutional right to proceed *without* counsel when he voluntarily and intelligently elects to do so." (*Faretta v. California*, *supra*, 422 U.S. at p. 807.) "'A trial court must grant a defendant's request for self-representation if three conditions are met. First, the defendant must be mentally competent, and must make his request knowingly and intelligently, having been apprised of the dangers of self-representation. [Citations.] Second, he must make his request unequivocally. [Citations.] Third, he must make his request within a reasonable time before trial. [Citations.]'" (*People v. Stanley* (2006) 39 Cal.4th 913, 931-932.) "'In determining on appeal whether the defendant invoked the right to self-representation, we examine the entire record de novo. [Citation.]' [Citation.]" (*Id.* at p. 932.)

"'Although a defendant has a federal constitutional right to represent himself [citation], in order to invoke an unconditional right he must assert it "'within a reasonable time prior to the commencement of trial.'" [Citations.] A motion made after this period is addressed to the sound discretion of the trial court. [Citation.] The court should consider such factors as the "'quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion.'" [Citations.]'" (*People v. Clark* (1992) 3 Cal.4th 41, 98-99.)

We review each of the factors listed *ante*. First, our examination of the record supports a reasonable determination that defendant's trial counsel's representation was

adequate. Mr. Quinn had been to the location of the burglary to take photos, he adequately questioned the witnesses, and he filed a *Romero* motion and an informal request for discovery. Moreover, defendant stated that Mr. Quinn's "intentions are good."

The second factor, the defendant's proclivity to substitute counsel, was apparent at the first hearing regarding self-representation because defendant had just completed a hearing on a motion to substitute counsel.

The third factor, the reasons for the request, also supports the court's denial of defendant's request. At the first hearing, defendant did not state any reasons for wanting to represent himself; however, assuming that defendant's reasons were the same as those for wanting to substitute counsel, then he did not state a reasonable basis for granting the motion. Defendant claimed that Mr. Quinn did not communicate with him; however, defendant acknowledged that Mr. Quinn had talked to him on the previous Friday and that the county jail often moves inmates, which makes it difficult for attorneys to contact their clients. In addition, defendant complained that Mr. Quinn "could have filed a motion for dismissal" at the preliminary hearing; however, Mr. Quinn did not represent defendant at the preliminary hearing. At the second hearing, defendant based his motion on the reasoning that Mr. Quinn was unprepared; however, the record reflects that Mr. Quinn was adequately prepared for trial, as he stated that he had been to the crime scene, taken photographs, and thought through various defense strategies, despite having been given the wrong address.

The stage of the proceedings also weighed against the granting of a motion for self-representation, as noted by the trial court at both hearings. The pretrial proceedings, which had taken eight months, were nearly concluded when defendant made the first motion on the eve of trial. Defendant made his second motion in the midst of trial.

Finally, the disruption or delay of the proceedings, which would result if the motions were granted, also supports the court's denial of defendant's motions. Defendant stated that when he made his first motion, he was not prepared to go to trial. If the court had granted defendant's motion, it would have necessarily needed to grant a continuance. Defendant's second motion would have required delaying a jury trial that was already in progress.

In sum, we find no abuse of discretion in the trial court's denial of defendant's motions based upon them being untimely.

Defendant contends that if his motions were untimely, then the court abused its discretion because it did not inquire into all of the factors listed *ante*. Although the trial court should have inquired into each of the factors, there is sufficient evidence in the record to support the court's decision denying defendant's motions and, consequently, we find no abuse of discretion. (*People v. Perez* (1992) 4 Cal.App.4th 893, 904-905.)

B. Petition for Writ of Habeas Corpus

Petitioner contends, in a petition for writ of habeas corpus, that Mr. Belden, the attorney who represented petitioner during the preliminary hearing, was ineffective.

Petitioner argues that Mr. Belden did not properly advise him regarding the prosecution's plea offer of a seven-year determinate sentence.

"To demonstrate that a [petitioner] has received constitutionally inadequate representation by counsel, he or she must show that (1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; *and* (2) counsel's deficient performance subjected the [petitioner] to prejudice, i.e., there is a reasonable probability that, but for counsel's failing, the result would have been more favorable to the [petitioner]. [Citations.]" (*In re Alvernaz* (1992) 2 Cal.4th 924, 936-937.)

"[T]he State Bar Rules of Professional Conduct and the American Bar Association's Standards for Criminal Justice . . . provide guidelines for determining the prevailing norms of practice relating to advising a defendant as to the decision whether to reject an offered plea bargain and proceed to trial. Under these guidelines, defense counsel must communicate accurately to a defendant the terms of any offer made by the prosecution, and inform the defendant of the consequences of rejecting it, including the maximum and minimum sentences which may be imposed in the event of a conviction. [Citations.]" (*In re Alvernaz*, *supra*, 2 Cal.4th at p. 937.)

We begin by examining whether Mr. Belden's performance was objectively unreasonable. Prior to the preliminary hearing, the complaint filed by the prosecution alleged that petitioner suffered one prior strike conviction; however, the prosecution was working to determine if petitioner suffered a second prior strike conviction. Mr. Belden was aware that the prosecution was investigating petitioner's prior strike

convictions and informed petitioner prior to the beginning of the preliminary hearing that petitioner "had an offer for seven years and that he was possibly looking at 25 years to life after trial if he had a third strike conviction."

Based upon Mr. Belden's declaration, we conclude that Mr. Belden accurately informed petitioner of the potential consequences of the terms of the prosecution's offer and of the consequences of rejecting the offer, including the maximum and minimum sentences, which would possibly be imposed in the event petitioner was convicted after trial.

Furthermore, Deputy Romero attested that he booked petitioner into jail on February 2, 2004, which was more than a year prior to the offense in the instant case. When another deputy discovered heroin in petitioner's possession and told Deputy Romero, petitioner attempted to swallow the heroin, and said "that he was trying to swallow it because it was his third strike." Accordingly, we infer that when petitioner was offered the plea bargain in the instant case, he had knowledge that he would possibly suffer a third strike sentence.

In summary, we find that Mr. Belden's performance did not fall below an objective standard of reasonableness under prevailing professional norms. Accordingly, we need not address whether there was a reasonable probability that petitioner was prejudiced.

Petitioner argues that his trial counsel was obligated to do more than simply inform him of the terms of the plea offer. Petitioner contends his trial counsel was required to investigate the merits of the prosecution's case, determine the likelihood that

petitioner could be sentenced pursuant to the "Three Strikes" law, and advise petitioner about the wisdom of accepting or rejecting the offered plea bargain.

In regard to Mr. Belden advising petitioner about whether or not to accept the plea offer, at the *Marsden* hearing concerning Mr. Quinn, petitioner stated, "I was advised against taking the time in the beginning, because they came at me with seven years. It is a burglary. In the sentencing it should have been four years." When the court informed petitioner that "the problem is [his] record," petitioner responded, "I understand that, your Honor." Based upon this exchange, we conclude petitioner was advised as to whether or not to accept the plea offer.

As to petitioner's argument that Mr. Belden should have investigated the merits of the prosecution's case, we conclude that based upon Mr. Belden's competent cross-examination of the prosecution's witness at the preliminary hearing, Mr. Belden was properly apprised of the merits of the prosecution's case.

Lastly, in regard to petitioner's assertion that Mr. Belden should have investigated whether he was likely to be sentenced pursuant to the Three Strikes law, Mr. Belden informed petitioner that he could face a sentence of 25 years to life if he were convicted at trial. Additionally, as noted *ante*, when petitioner was discovered with heroin in his possession, he expressed that he was aware that he would be subject to a third strike sentence.

Consequently, we find petitioner's argument unpersuasive.

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

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McKINSTER
Acting P. J.

We concur:

RICHLI
J.

GAUT
J.