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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE DAVID RANKIN,

Defendant and Appellant.

C065011

(Super. Ct. No.  
CM031684)

Defendant George David Rankin pleaded no contest to possession for sale of methamphetamine and possession for sale of marijuana. He contends on appeal that the trial court erred by not holding a third *Marsden*<sup>1</sup> hearing when he sought to

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118, 123-126 (*Marsden*), held that when a criminal defendant seeks a new attorney based upon a claim that his appointed counsel has not provided competent representation, the trial court must inquire into the reasons for the defendant's dissatisfaction with counsel.

withdraw his plea. We conclude the trial court did not err in declining to hold a third *Marsden* hearing after previously investigating defendant's similar complaints about his attorney in two prior hearings. We will affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

Two police officers observed defendant shortly before 1:00 a.m. driving a pickup truck that appeared to have been in a recent traffic collision. According to one of the officers, the truck "was barely running, there was smoke coming from it, [and] there was [*sic*] shrubs hanging from the front of it." On closer examination, the officer also noticed "huge gashes in the hood," "transmission and radiator fluid leaking onto the ground," and other dents on the truck. Defendant told the officer he had not been in an accident and that "the damage to the vehicle was probably done before he borrowed it from the owner."

Another officer smelled a strong odor of marijuana coming from the cab of the truck, and a search of a backpack found on the passenger floorboard uncovered several baggies of methamphetamine and marijuana, as well as "indicia of sales." Defendant denied that the backpack belonged to him. However, the registered owner of the truck, who was called to the scene, denied any knowledge of the backpack. The owner also stated he had loaned the vehicle to defendant about an hour earlier and there had been no damage to it at that time. Another witness said defendant had a backpack when he borrowed the truck.

Defendant was charged with possession for sale of methamphetamine and marijuana, with enhancements for two prior prison terms.

Prior to the preliminary examination, defendant's trial attorney filed a motion to suppress evidence. At the conclusion of the preliminary hearing, the trial court denied the motion, ruling that defendant did not have a reasonable expectation of privacy in the backpack and that, in any event, "the totality of the circumstances supports the reasonableness of the search."

At the next hearing, defendant made a motion to relieve his court-appointed attorney. During an in camera hearing, defendant complained that he did not feel his attorney was prepared for the preliminary hearing and that, as a result, the suppression motion was denied. In addition, defendant raised a number of other complaints: he had not received a copy of the discovery; audio and video tapes of the incident had not been viewed; they did not have a "private investigator"; and his attorney did not call "the other witness citizen" to testify at the preliminary hearing on the issue of consent to search the truck. Defendant informed the court that he wanted to file several motions, including a motion for a private investigator, a discovery motion, and a *Pitchess*<sup>2</sup> motion. After the defense attorney responded to each of defendant's complaints, defendant

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<sup>2</sup> A *Pitchess* motion seeks discovery of peace officer personnel records and is required to set forth the materiality of such records to the subject matter of the pending litigation. (Evid. Code, § 1043; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.)

stated that his only disagreement was regarding the decision whether to file a *Pitchess* motion. The trial court denied defendant's request for new counsel.

At a subsequent hearing, defendant pleaded no contest to possession for sale of methamphetamine (Health & Saf. Code, § 11378) and possession for sale of marijuana (Health & Saf. Code, § 11359), and admitted having served a prior prison term. (Pen. Code, § 667.5, subd. (b).) Prior to entering his plea, defendant told the trial court that he had received some threatening letters while in jail but that this had not affected his decision to enter his plea.

Defendant's sentencing hearing was continued several times, in part to allow him to make a motion to withdraw his plea.

In the meantime, defendant requested another *Marsden* hearing. During the second *Marsden* hearing, defendant revisited his complaints about his attorney's alleged lack of preparation for the preliminary examination and his failure to file a *Pitchess* motion, and also objected to the fact that he had not been provided an opportunity to view the evidence until "recently." In addition, defendant complained that his attorney had not investigated his disabilities or his receipt of threatening letters while in jail. Defendant also objected to his attorney "openly discuss[ing] [his] case" in the presence of another inmate when they were last in court, stating that his attorney "went back and forth" to the point that defendant was "confused . . . and in fear of not taking th[e] deal."

Defendant's attorney responded to defendant's complaints and defendant's second *Marsden* motion was denied.

At the sentencing hearing one month later, defendant made a motion to withdraw his plea. As explained by his attorney, defendant's motion was based on complaints raised during his prior *Marsden* motions, including: his attorney's "failure" to file a suppression motion; the fact that defendant had not seen the discovery or the recording of the encounter with police officers that led to his arrest; and his attorney's failure to file a motion to withdraw his plea. Defendant was asked whether there was any other basis for his request to withdraw his plea. He responded that he wanted to "get [his] day in court to try to exonerate" himself and that he believed if his case had been properly investigated and prepared, he would have received a more favorable outcome. He also suggested that his attorney should have sought a rehearing of the suppression motion pursuant to Penal Code section 995. The trial court denied defendant's motion to withdraw his plea, denied probation and sentenced him to state prison for a term of four years.

Defendant obtained a certificate of probable cause.

#### DISCUSSION

Defendant argues that the trial court erred by failing to hold a third *Marsden* hearing when he moved to withdraw his plea based on ineffective assistance of counsel. He is mistaken.

"[A] trial court's duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises when the defendant in some manner moves to discharge his current

counsel.” (*People v. Lucky* (1988) 45 Cal.3d 259, 281.) A defendant may raise a claim of ineffectiveness of counsel in a motion to withdraw the plea. (*People v. Smith* (1993) 6 Cal.4th 684, 693.) A defendant’s complaints regarding counsel in this context may be sufficient to trigger an inquiry into the adequacy of representation, despite the absence of an express request for the appointment of new counsel. (See *People v. Kelley* (1997) 52 Cal.App.4th 568, 580; but see *People v. Gay* (1990) 221 Cal.App.3d 1065, 1070.)

Defendant’s motion to withdraw his plea was based, in part, on assertions regarding his trial attorney’s representation. But the complaints already had been aired at length during two prior *Marsden* hearings, one of which occurred after defendant entered his plea. Contrary to defendant’s claim on appeal, he was not “required to raise the motion [to withdraw his plea]” on his own nor was the motion “simply . . . ignored” by the trial court. Rather, defense counsel informed the court of the basis for the motion, and defendant was afforded the opportunity to set forth any additional grounds. When defendant failed to set forth any new issues concerning the performance of his attorney, the court was not required to hold another *Marsden* hearing.

Defendant maintains that any time a defendant expresses “post-conviction . . . dissatisfaction with counsel,” this “triggers a duty by the trial court to hold a closed hearing under *People v. Marsden* to determine whether substitute counsel should be appointed to bring a motion to withdraw the plea.” The cases cited by defendant to support this proposition require

only that the trial court itself make inquiry of the defendant as to complaints about counsel rather than relying on newly appointed counsel's assessment of the merits of a defendant's claims. (See *People v. Mendez* (2008) 161 Cal.App.4th 1362, 1367-1368; *People v. Mejía* (2008) 159 Cal.App.4th 1081, 1086; *People v. Eastman* (2007) 146 Cal.App.4th 688, 695.) In fact, one of the cases cited by defendant noted that the trial court's duty was "to elicit from 'defendant, in open court or, when appropriate, at an *in camera* hearing, the reasons he believes he was inadequately represented at trial.'" (*People v. Mejía, supra*, 159 Cal.App.4th at p. 1086.)

Defendant maintains he was prejudiced by the trial court's failure to hold a third *Marsden* hearing because it is unknown whether the grounds he stated for wanting to withdraw his plea "constituted the entirety of [his] complaint" or if he might have "articulated these issues in more detail." After defendant's attorney informed the trial court of the bases upon which defendant sought to withdraw his plea, the trial court asked defendant whether there were any other grounds for his request. Defendant offered several complaints about his attorney's representation, none of which differed in any significant respect from his previous complaints. There is no basis to suspect that defendant had additional, undisclosed complaints. And as the court previously conducted two *Marsden* hearings on these issues, there is no reason to believe defendant had additional details about his complaints that had not already been disclosed.

In sum, absent some indication that defendant was raising new complaints or had new information to present, the trial court was not required to hold a third *Marsden* hearing.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.