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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.

JENNIFER CHAVEZ,

Defendant and Appellant.

E077652

(Super.Ct.No. FWV20002675)

OPINION

APPEAL from the Superior Court of San Bernardino County. Richard V. Peel, Judge. Affirmed.

The Law Office of Kevin J. Lindsley, Kevin J. Lindsley; and Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Robin Urbanski and Laura Baggett, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Jennifer Chavez was sentenced to five years in prison for her role in a stabbing, while her codefendant

received a suspended sentence and probation. Chavez here contests the denial of her motion to withdraw her guilty plea, arguing that she received ineffective assistance of counsel during plea bargaining, that she was denied her right to counsel “free from conflicts of interest”, and that her “acquiescence in the plea agreement was made under duress.” We affirm the judgment.

FACTS

On August 1, 2020, a verbal argument between codefendant Guadalupe Arce and the victim turned physical. Chavez, who has described Arce as her “best friend,” joined Arce in punching the victim. During the fight, the victim was stabbed in the stomach. Both Arce and Chavez denied having a knife or stabbing the victim, and both initially denied that the other had a knife. The victim told police that Arce and Chavez were the only two people who struck her, but she did not identify which one had stabbed her.

Several days after the stabbing, Chavez and Arce were both charged with one count of assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(1)) and an enhancement of that count for personally inflicting great bodily injury (§ 12022.7, subd. (a)). Chavez was represented by a public defender at arraignment, but she obtained private counsel shortly thereafter.

In November 2020, Arce was arraigned, represented by the same private attorney whom Chavez had retained. The attorney subsequently filed a conflict of interest waiver signed by both Chavez and Arce.

¹ Undesignated statutory references are to the Penal Code.

On the same day in April 2021, both Chavez and Arce entered into plea agreements, which the trial court accepted and confirmed in a single, combined hearing. Chavez pleaded guilty as charged in exchange for a sentence of five years in prison (the low term of two years for count one, plus three years for the enhancement). Arce pleaded guilty only to count 1, did not admit the enhancement, and received two years on felony probation, with a three-year suspended sentence. The record does not conclusively establish the exact terms of the prosecution's plea offers. Chavez suggests, however, that the offers were a package deal, requiring one of the codefendants to take responsibility for personally stabbing the victim and offering greater leniency to the other; according to her, their counsel advised them "that someone was going to need to plead guilty on that date otherwise we would BOTH be going to prison for a long time."²

In a pre-sentence interview with a probation officer in May 2021, Chavez stated that she had decided to fire her attorney and seek to withdraw her guilty plea. She claimed that she was not in fact the person who stabbed the victim. Arce had asked Chavez "not to tell," and Chavez had complied "due to loyalty," but she now saw "the

² It is undisputed that on the facts of this case, only one of the two defendants could properly be convicted of the enhancement for personally inflicting great bodily injury by stabbing the victim; the punching that preceded the stabbing did not cause great bodily injury, and the victim was stabbed only once. Chavez suggests that the prosecution left it up to Chavez and Arce to decide among themselves who would accept that greater degree of culpability. Nevertheless, on our record, it is conceivable that the prosecution's offer was specifically for Chavez to plead guilty as charged, and for Arce only to take the lesser degree of responsibility.

severity of the situation” and she did not want to “take the blame for something that she did not do.”

In June 2021, Chavez’s private attorney was relieved and conflict panel counsel was appointed. In July 2021, Chavez’s new counsel filed on her behalf a motion to withdraw her plea for good cause under section 1018. Chavez’s declaration in support of the motion states that, on the way to court on the day they entered their pleas, Arce told Chavez “that she was five months pregnant and could not go to prison even though she was entirely responsible for the victim’s injury/injuries.” When they arrived at court, their shared counsel encouraged them to accept the prosecution’s plea offers. According to Chavez, counsel “knew that [Arce’s] fingerprints were the only prints found on the knife and still pressured me to plead guilty.” She felt “forced to plead guilty” because of the “pressure and duress” from both the attorney and Arce.

After a hearing in August 2021, the trial court denied Chavez’s motion without receiving additional testimony. At sentencing several weeks later, in her victim impact statement, the victim stated that it had been Arce, and not Chavez, who stabbed her. She felt she was “receiving no justice” because Arce would not be going to prison, while Chavez, who had “already paid for what she took part in,” was “going to have to serve the five years . . . [Arce] should have served.” Nevertheless, after consulting with counsel, the trial court sentenced Chavez in accordance with her plea agreement, denying probation and imposing a total sentence of five years in prison.

DISCUSSION

Chavez contends that her plea was the product of duress applied by both her codefendant and their shared counsel. We are not persuaded that the trial court's rejection of that argument was an abuse of discretion.

“On application of the defendant at any time before judgment . . . the court may . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.” (§ 1018.) To prevail, the defendant must establish good cause by clear and convincing evidence. (*People v. Codinha* (2021) 71 Cal.App.5th 1047, 1070.) “Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea’ under section 1018.” (*People v. Patterson* (2017) 2 Cal.5th 885, 894 (*Patterson*)). Inadvertence, fraud or duress are other factors that may overcome a defendant’s free judgment. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208 (*Huricks*)). A defendant claiming that he or she was pressured into the plea must demonstrate that it was more than the pressure experienced by “every other defendant faced with serious felony charges and the offer of a plea bargain.” (*Id.* at p. 1208.) “Postplea apprehension regarding the anticipated sentence, even if it occurs well before sentencing, is not sufficient to compel the exercise of judicial discretion to permit withdrawal of the plea of guilty.” (*People v. Hunt* (1985) 174 Cal.App.3d 95, 104 (*Hunt*)).

“A decision to deny a motion to withdraw a guilty plea “rests in the sound 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.) “Moreover, a reviewing court must adopt the trial court’s factual findings if substantial evidence supports them.” (*Ibid.*) In determining the facts, “the trial court is not bound by uncontradicted statements of the defendant,” and where evidence is contradictory, the trial court is “entitled to resolve the factual conflict against” the defendant. (*Hunt, supra*, 174 Cal.App.3d at pp. 103, 104.)

Here, Chavez produced some evidence—her own declaration—that if credited would tend to support the conclusion her plea was coerced. Coercion is “a particular danger in the package-deal plea bargain context.” (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 124-125.) And our Supreme Court has acknowledged that “[p]sychological pressures sufficient to indicate an involuntary plea *might* be present if the third party promised leniency is a close friend or family member whom the defendant feels compelled to help.” (*In re Ibarra* (1983) 34 Cal.3d 277, 289, italics added (*Ibarra*)). It is not implausible that Chavez’s motivations included the desire to help her pregnant “best friend” avoid prison.

Nevertheless, a person can rationally and voluntarily choose to help another. The question is not whether Chavez was motivated to help Arce, but rather whether the totality of the circumstances show she was coerced to do so. (*Ibarra, supra*, 34 Cal.3d at pp. 288-290; see, e.g., *Cortez v. United States* (9th Cir. 1964) 337 F.2d 699, 701-702 [defendant’s plea, though motivated by desire to protect pregnant wife and co-defendant, was nonetheless voluntary].) Other factors besides Chavez’s friendship with Arce at least

arguably weigh in favor of the conclusion that Chavez's plea was not coerced. There is nothing in the record that suggests that the prosecution had misrepresented facts to Chavez and Arce, or that the plea offers were made for an improper purpose or without a reasonable basis in the evidence. (See *Ibarra, supra*, 34 Cal.3d at pp. 289-290.) Not only Arce, but also Chavez, received some leniency, with the imposition of the low term of 2 years for the alleged assault. (*Id.* at p. 290 ["a plea is not coerced if the promise of leniency to a third party was an insignificant consideration by a defendant in his choice to plead guilty"].) Furthermore, the trial court was not bound to credit Chavez's current claim of duress over her earlier express disavowal on her plea form that anyone had used any duress or undue influence to get her to plead guilty. (See *Hunt, supra*, 174 Cal.App.3d at pp. 103-104.) And the circumstance that her attorney advised her to accept a plea offer immediately or risk a longer prison term is, without more, no different than the pressure experienced by many, if not most, defendants faced with serious felony charges and the offer of a plea bargain. (See *Huricks, supra*, 32 Cal.App.4th at p. 1208.) We therefore find no abuse of discretion in the trial court's conclusion that Chavez had failed to show that her plea was the product of coercion or duress.

Chavez fares no better, at least in this appeal, by framing the issue as a claim of ineffective assistance of counsel. It is "well settled that where ineffective assistance of counsel results in the defendant's decision to plead guilty, the defendant has suffered a constitutional violation giving rise to a claim for relief from the guilty plea." (*In re Alvernaz* (1992) 2 Cal.4th 924, 934.) On direct appeal, however, a conviction will be

reversed for ineffective assistance of counsel “only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding.” (*People v. Mai* (2013) 57 Cal.4th 986, 1009.)

Our record does not establish why Chavez’s trial counsel advised her and Arce to accept the plea offers from the prosecution. Counsel may have had reasons to believe that Chavez was guilty as charged. Even if, as Chavez contends, she is innocent of some of her charges and has some basis to support that contention, there are any number of reasons why defense counsel might rationally advise a client to accept a plea offer. On the other hand, it is also conceivable that counsel did not have sound reasons for the advice or acted from some improper purpose. The issue is therefore more appropriately resolved in a habeas corpus proceeding with a record developed for it with testimony from Chavez and her former counsel, and perhaps the victim and Arce as well.³

The same is true for Chavez’s contentions based on her counsel’s alleged conflict of interest. Setting aside the question of whether Chavez validly waived any conflict of interest, “[e]ssentially, a claim of conflict of interest constitutes a form of ineffective

³ A sworn declaration from the victim that tracks her unsworn victim impact statement, or a declaration from Arce taking responsibility for the stabbing, would also tend to support Chavez’s assertion that she is actually innocent as to the personal use enhancement. (See *In re Hardy* (2007) 41 Cal.4th 977, 1016 [“Habeas corpus will lie to vindicate a claim that newly discovered evidence demonstrates a prisoner is actually innocent”].)

assistance of counsel.” (*People v. Perez* (2018) 4 Cal.5th 421, 435.) The defendant must show “that his or her counsel was burdened by an ‘actual’ conflict of interest—one that in fact adversely affected counsel’s performance.” (*Ibid.*) The court hearing the claim must “determine whether a lawyer who did not face the same conflict would have made different choices as well as whether counsel’s choices were the product of tactical reasons rather than the alleged conflict of interest.” (*Id.* at p. 436.) Again, the present record is inadequate to make such a determination, and the issue is more appropriately resolved in a habeas corpus proceeding.

DISPOSITION

We affirm the judgment.

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RAPHAEL
J.

We concur:

FIELDS
Acting P. J.

MENETREZ
J.