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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.

ANTHONY MARCELLES BROWN,

Defendant and Appellant.

E079165

(Super.Ct.No. FVI19001977)

OPINION

APPEAL from the Superior Court of San Bernardino County. Joseph B. Widman, Judge. Affirmed.

Law Office of Zulu Ali & Associates, and Whitney Ali, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, and Melissa Mandel, Seth M. Friedman, and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

Anthony Marcelles Brown pled no contest to two criminal offenses. One month later, he unsuccessfully moved to withdraw his plea, alleging he was under the influence of prescription drugs when he made it. On appeal, he argues the trial court abused its discretion by denying his motion to withdraw his plea. We affirm.

BACKGROUND

In May 2021, Brown pled no contest to making criminal threats (Pen. Code, § 422, subd. (a))¹ and being under the influence of a controlled substance while possessing a firearm. (Health & Saf. Code, § 11550, subd. (e).) In court, Brown stated he went over the plea form with his lawyer, read it, understood its contents, understood the terms of his plea agreement, and was not under the influence of alcohol or drugs.

The next month Brown moved to withdraw his plea. Brown alleged that when he made his plea he was under the influence of Percocet, sertraline, gabapentin, enalapril, and amlodipine. The court held a contested hearing on the motion in April 2022. Brown did not testify, but, among other evidence, offered medical records showing he had been prescribed the medications he claimed he was taking when he made his plea. On the other hand, the People called as a witness Brown's attorney at the time of the plea. The attorney testified that he went over the plea form with Brown and that he had no concerns Brown misunderstood the plea during the conversations the two of them had. He recalled Brown having no difficulty during the plea colloquy itself. He testified that if he thought Brown was impaired due to medications he would not have gone forward with the plea.

¹ Unlabeled statutory citations refer to the Penal Code.

The attorney had knowledge at the time that Brown had medical concerns and was receiving treatment that he had discussed with Brown's lawyer in a civil case, yet he had no pause in going forward with the plea.

After hearing evidence and argument, the court denied the motion. The court stated, "even if I consider [the medical] records . . . I conclude that the defense hasn't met its burden by clear and convincing evidence," because "it hasn't been established . . . that [Brown] was, in fact, under the influence of any of these medicines at the time of the plea in such a way that would make him not understand essentially what he was doing." The court also noted the plea transcript showed "[t]here didn't seem to be any communication problem between the Court and [Brown]," and found credible Brown's statements, made at the plea hearing, that he understood the plea and was not under the influence of alcohol or drugs, recognizing that the court did not specifically ask about prescription medications. Finally, the court credited the plea attorney's testimony that Brown did not at the time have difficulty understanding the agreement due to prescription medications.

Brown timely filed a notice of appeal that included a request for a certificate of probable cause, which was granted.

ANALYSIS

Brown argues it was error to deny his motion to withdraw his guilty plea. We disagree and affirm.

"On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court

may . . . for a good cause shown, permit the plea of guilty to be withdrawn.” (§ 1018.)

“ ‘Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for withdrawal of a guilty plea’ under section 1018 [citation], and section 1018 states that its provisions ‘shall be liberally construed . . . to promote justice.’

A defendant seeking to withdraw a guilty plea on grounds of mistake or ignorance must present clear and convincing evidence in support of the claim.” (*People v. Patterson* (2017) 2 Cal.5th 885, 894.)

“ ‘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. [Citation.] Moreover, a reviewing court must adopt the trial court’s factual findings if substantial evidence supports them.’ ” (*People v. Archer* (2014) 230 Cal.App.4th 693, 702.) “It is entirely within the trial court’s discretion to consider its own observations of the defendant in ruling on such a motion. [Citation.] The court may also take into account the defendant’s credibility and his interest in the outcome of the proceedings.” (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 918.) “ ‘We do not reweigh the evidence or [assess] witness credibility.’ ” (*People v. Lopez* (2021) 66 Cal.App.5th 561, 574.)

Here, the court’s decision to deny Brown’s request to withdraw his guilty plea was within the broad discretion granted to it under section 1018. The court reviewed the plea transcript and concluded it generally “undermines the defense’s position” because it showed a “routine plea colloquy” with no concerns from Brown or indication that he did

not understand the proceeding. Because Brown's former counsel testified at the motion hearing, the trial court had a chance to evaluate his credibility. The court credited trial counsel's testimony that he had no difficulties with Brown either in conversations going over the plea or at the plea hearing, that Brown did not appear to be under the influence of medications, and that he would not have proceeded if he thought Brown was not competent to make the plea. Such credibility determinations are within the court's power to make and cannot be revisited on appeal. The court also found Brown presented evidence that he was prescribed certain drugs, but no clear evidence he had in fact taken those drugs and was impaired by having done so when he made his plea. The court determined the plea colloquy contained no indication Brown misunderstood the plea. Indeed, the court found Brown's affirmations that he understood his plea and was not under the influence when he made it credible. These findings are more than sufficient to support the court's decision to deny Brown's motion.

Brown's arguments to the contrary are attempts to contest the trial court's considered determination. For instance, Brown argues the court should have accepted the evidence that he was prescribed the medicines as evidence he was taking them and was impaired from having done so. He also argues there was evidence Brown was suffering from several injuries, that his plea attorney knew of these injuries, and that the plea attorney's failure to investigate Brown's competence to make his plea renders the plea attorney's testimony not credible. The trial court already rejected those arguments, and we do not revisit those findings on appeal.

Instead, from the evidence presented, the court concluded Brown not only did not misunderstand, but affirmatively understood and accepted the consequences of his plea. These factual findings were supported by substantial evidence, namely Brown's attorney's testimony and the plea colloquy. Therefore, the court did not abuse its discretion by concluding Brown did not meet his burden to prove by clear and convincing evidence that there was any mistake, ignorance, or other good cause sufficient to allow him to withdraw his plea.

DISPOSITION

We affirm the order denying Brown's motion to withdraw his plea.

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RAPHAEL
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.