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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

D075609

Plaintiff and Respondent,

(Super. Ct. No. SCD276593)

v.

PETER PATRICK LAFORTE,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County, Polly H. Shamoon, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Allison V. Acosta, Deputy Attorneys General, for Plaintiff and Respondent.

APPENDIX A

INTRODUCTION

Peter Patrick LaForte pleaded guilty to one count of assault with a deadly weapon or force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)),¹ admitted he inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), and admitted he suffered one prior serious felony conviction (§§ 667, subd. (a)(1), 668, 1192.7, subd. (c)), and one prior strike conviction (§§ 667, subds. (b)–(i), 668, 1170.12). After LaForte accepted the plea, LaForte's trial counsel informed the trial court he had misadvised LaForte regarding the consequences of the plea. Therefore, trial counsel requested the appointment of new, conflict-free counsel to file a motion to withdraw the plea on LaForte's behalf. At the insistence of LaForte, however, the court denied the request and imposed a stipulated prison sentence of nine years for the charged offense.

LaForte contends the trial court interfered with his constitutional right to conflict-free counsel by coercing him into foregoing a consultation with conflict-free counsel regarding a possible plea withdrawal. He further claims he was deprived of conflict-free counsel when the court denied the request to appoint substitute counsel and sentenced him. We reject these contentions and affirm the judgment.

1 All further statutory references are to the Penal Code unless otherwise noted.

BACKGROUND

According to the probation report, LaForte entered a retail store and attempted to conceal a bottle of vodka under his clothing. A store employee witnessed the attempted concealment and confronted LaForte. LaForte removed the bottle from under his clothing and struck the employee with it, causing him to suffer a laceration.

LaForte was charged by information with one count of assault with a deadly weapon or force likely to produce great bodily injury. (§ 245, subd. (a)(1).) The information alleged LaForte used a dangerous or deadly weapon (§ 1192.7, subd. (c)(23)), and inflicted great bodily injury on the victim (*id.*, subd. (e)(8), § 12022.7, subd. (a)). It further alleged he suffered three prior prison terms (§ 667.5, subd. (b)), one prior serious felony conviction (§§ 667, subd. (a)(1), 668, 1192.7, subd. (c)), and one prior strike conviction (§§ 667, subds. (b)-(i), 668, 1170.12).

LaForte pleaded guilty to the charged offense, admitted he inflicted great bodily injury on the victim, and admitted he suffered the prior serious felony conviction and the prior strike conviction. In exchange, the remaining allegations were dismissed. The plea contained a stipulated sentence of nine years, plus 16 months for an offense in a separate case, for an aggregate term of 10 years four months.

At the outset of the sentencing hearing, LaForte's retained counsel informed the court he "made a mistake" while advising LaForte about the plea. He stated he

previously believed—and advised LaForte—the offense to which LaForte pleaded guilty was a serious felony. (§ 1192.7, subd. (e).) But, based on LaForte's admission that he inflicted great bodily injury on the victim, the offense was a violent felony. (§ 667.5, subd. (c)(8).) According to LaForte's counsel, LaForte was "adamant" he would not plead guilty to a violent felony. Based on the mistake, LaForte's counsel asked the court to appoint new counsel to file a motion to withdraw the plea on LaForte's behalf.

The court initially granted the request and informed the parties it would appoint a public defender. However, it then advised LaForte it wanted him to "know the risks" of a plea withdrawal. It advised him his potential exposure would be greater than nine years—upwards of 20 years—if he were to "get[] his wish and ... withdraw his plea" Further, it stated the prosecution was eager to prove the great bodily injury allegation and may be unwilling to negotiate a new deal if he were to withdraw his plea. LaForte replied, "I'll take the ten years. I'll take the ten years, four months."

The court did not immediately proceed to sentencing and instead responded: "I want you to talk to your lawyer for a few minutes and make sure it's what you want to do. If it's what you want to do, that is fine.... [¶] ... [¶] [T]here is a lot on the line here for you. And I don't know what you want to do, sir, that is why I suggest you talk to your lawyer for a few minutes, see how you want to go forward. [¶] If you want me to appoint [a] public defender and look at withdrawing this plea, I will do that. If you want to do that, we will set the date for some time next week. If you don't want to do that and you want to go forward with the sentencing, tell your lawyer and we can do that too."

LaForte's counsel then stated he was uncomfortable with his continued representation of LaForte. He proposed the court schedule the hearing to appoint new counsel and, in the interim, he would consult with LaForte about his litigation options. The court agreed to put the matter over, as counsel requested, but LaForte interjected as follows: "[T]he things [counsel has] said to me have been incorrect, okay... [¶] ... [¶] I just want—I want—Let's finish this today, okay. [¶] ... [¶] I mean, why don't I just say I'm going to get sentenced today? Why can't I just get sentenced today where this is over, okay? You said what you said, I agree what you're saying. Let me get the ten years, four months. Let's—done. We're done. Then we're done. I mean—I mean, we can be done. [¶] Why bring it back next week? I'm saying—you know what I mean... I said no, I don't want to discuss it, I'm ready. I'll take ten years four months."

The court adjourned proceedings to permit LaForte and his counsel to confer. According to LaForte's counsel, he advised his client during the adjournment that it was in his interests to withdraw the plea, but LaForte insisted he "was going to go forward against [counsel's] advice." After the hearing resumed, the court asked LaForte and his counsel if they were prepared to proceed with sentencing and both answered in the affirmative. The court then sentenced LaForte to nine years in prison for the charged offense, plus 16 months for the separate offense not at issue in this appeal.

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After sentencing, LaForte's counsel filed a motion to be relieved as counsel and for appointment of a public defender. The motion stated that LaForte claimed ineffective assistance of counsel based on his counsel's misadvice and, therefore, a conflict in

representation existed. It stated, "continu[ed] attempts [were] being made by [trial] counsel to try to assist [LaForte]" and, in fact, counsel had twice attempted to "bring him into court" to "make a knowing and intelligent decision as to his plea" It further stated LaForte "need[ed] to have ... new counsel advise him what to do because he [was] not listening to [his counsel] even though [his counsel was] trying to help him."

At the hearing on the motion to withdraw as counsel and appoint a public defender, the court stated it was not inclined to relieve counsel, but it would "appoint public defenders," presumably as co-counsel. LaForte interjected: "I didn't ask to get this court date, okay? He did it, okay? He did it. I'm done. I'm sentenced. It's over. He's the one doing all this right now. [¶] ... [¶] For whatever reason, he wants to get a public defender to try to clean up his mess—whatever. I don't know. I don't know why he's doing it. But I didn't ask for this court date, and we're done. I'm sentenced."

The court asked LaForte whether he was trying to withdraw his plea and he stated, "[n]o." It then asked him whether he was trying to modify his sentence and he stated, "[n]o." Finally, it asked him whether he wanted the court to calendar a hearing to address a motion to withdraw the plea and he stated, "[n]o." Following this colloquy, the court denied the pending motion to appoint a public defender.

DISCUSSION

On appeal, LaForte contends his counsel's erroneous advice regarding the plea created a conflict of interest between him and his counsel. He claims the error resulted in

a conflict of interest because any plea withdrawal motion he might have filed in the trial court would have required him to argue he relied on his counsel's flawed advice. This, in turn, would have required counsel to admit he rendered ineffective assistance, which LaForte describes as an obvious conflict of interest between attorney and client.

"A criminal defendant is guaranteed the right to the assistance of counsel by the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution. This constitutional right includes the correlative right to representation free from any conflict of interest that undermines counsel's loyalty to his or her client." (*People v. Rices* (2017) 4 Cal.5th 49, 65.) "As a general proposition, such conflicts "embrace all situations in which an attorney's loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another client or a third person or his own interests." (*People v. Doolin* (2009) 45 Cal.4th 390, 417 (*Doolin*).) The guaranty of conflict-free counsel "protects the defendant who retains his own counsel to the same degree and in the same manner as it protects the defendant for whom counsel is appointed, and recognizes no distinction between the two." (*People v. Bonin* (1989) 47 Cal.3d 808, 834 (*Bonin*)).

In view of the alleged conflict of interest between LaForte and his counsel, LaForte contends the trial court's statements to him during the sentencing hearing "inaccurately," "misleadingly," and "intimidatingly" discouraged him from consulting with conflict-free counsel. We conclude there is no merit to this argument because the court did not discourage him from consulting conflict-free counsel. Quite the opposite, it stated it *would* "appoint [a] public defender to [the] matter" and "put [the case] on for

appointment of [a] public defender"—exactly the relief that was requested. Even after LaForte stated he wished to be sentenced, the court commented: "If you want me to appoint [a] public defender and look at withdrawing this plea, I will do that. If you want to do that, we will set the date for some time next week. If you don't want to do that and you want to go forward with the sentencing, tell your lawyer and we can do that too."

As noted, the court advised LaForte of the risks he may face if he were to withdraw his plea, which was the ostensible next step if LaForte were to seek and obtain new counsel. However, it at no time suggested these risks would arise merely if LaForte were to consult with, or seek appointment of, new counsel. Rather, it stated only that the risks would arise if LaForte were to withdraw his plea. These statements were accurate and did not discourage LaForte from consulting conflict-free counsel. (*People v. Woodruff* (2018) 5 Cal.5th 697, 735 [court did not discourage counsel from applying for co-counsel where court stated it would "consider anything [counsel] wish[ed] to bring to [its] attention"]; *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1002 [court did not "induce" defendant to withdraw self-representation motion by having a "serious" conversation with him and his counsel about the risks of self-representation].)

In the alternative, LaForte claims the trial court should have held a hearing regarding the potential conflict of interest between him and his counsel and, if a conflict of interest existed, appointed new counsel or ensured LaForte knowingly, voluntarily, and intelligently waived the conflict. (*Bonin, supra*, 47 Cal.3d at pp. 836–837 ["When the trial court knows, or reasonably should know, of the possibility of a conflict of interest on

the part of defense counsel, it is required to make inquiry into the matter.... [¶] ... [¶]

After the trial court has fulfilled its obligation to inquire into the possibility of a conflict of interest and to act in response to what its inquiry discovers, the defendant may choose the course he wishes to take."].) LaForte contends the court took none of these actions and, therefore, violated his constitutional right to conflict-free counsel.

For both state and federal purposes, a defendant seeking to obtain reversal of a judgment on grounds of conflict of interest "must demonstrate that (1) counsel labored under an actual conflict of interest that adversely affected counsel's performance, and (2) absent counsel's deficiencies arising from the conflict, it is reasonably probable the result of the proceeding would have been different." (People v. Mai (2013) 57 Cal.4th 986, 1010, 1011 (Mai).) An actual conflict "is a conflict of interest that adversely affects counsel's performance." (Doolin, *supra*, 45 Cal.4th at p. 418.)

Applying these standards, we conclude the record in the present case discloses no actual conflict of interest. A potential conflict of interest arose when counsel misadvised LaForte regarding the plea, given that LaForte conceivably could have tried to withdraw his plea on grounds of misadvice of counsel and his counsel's self-interest might have impaired those efforts. (See Christeson v. Roper (2015) 574 U.S. 373 [135 S.Ct. 891, 894] ["[A] 'significant conflict of interest' arises when an attorney's 'interest in avoiding damage to [his] own reputation' is at odds with his client's 'strongest argument' "].) However, this potential conflict of interest never ripened into an actual conflict of interest because LaForte never pursued or expressed a desire to pursue a motion to withdraw his plea. (See Mai, *supra*, 57 Cal.4th at p. 1013 [defendant's conflict of interest claim failed

because he was "unable to show on the appellate record that any potential conflict of interest actually materialized"].) On the contrary, over his counsel's advice, he repeatedly and fervently disclaimed any intention of seeking to withdraw his plea, both at the sentencing hearing and the hearing on his counsel's motion to withdraw.

Further, the record discloses no grounds to conclude any alleged conflict adversely affected counsel's performance. After LaForte's counsel realized he misadvised his client, he candidly disclosed the error to the court and requested the appointment of new counsel. After LaForte informed the court he wished to proceed to sentencing, counsel again voiced his discomfort with proceeding and requested the appointment of new counsel. And, while counsel ultimately consented to sentencing, he did so only after conferring with his client, who, according to counsel, stated he "was going to go forward [with sentencing] against [counsel's] advice." LaForte's counsel even filed a postsentencing motion to withdraw as counsel and seek appointment of new counsel, citing alleged ineffective assistance as the grounds for the request. On this record, there is no basis for us to conclude LaForte's counsel "pulled his punches," i.e., failed to represent defendant as vigorously as he might have, had there been no conflict." (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 310 (*Gonzales*)).

LaForte also has not demonstrated a reasonable probability the result of the proceeding would have been different but for the alleged conflict of interest. Citing *People v. Easley* (1988) 46 Cal.3d 712, and *People v. Mroczko* (1983) 35 Cal.3d 86, LaForte argues the prejudice standard applicable to conflict of interest claims "does not depend on the *outcome* of the case as in a more typical [federal] ineffective-assistance-of-

counsel analysis," and is instead satisfied so long as the defendant establishes there was an actual conflict of interest. However, our Supreme Court disapproved the *Easley* and *Mroczko* decisions, and many others, to the extent they imposed a standard for conflict of interest claims different from the federal ineffective assistance of counsel standard.

(*Doolin, supra*, 45 Cal.4th at p. 421, fn. 22.) As the law currently stands, "both standards involve a consideration of prejudice in the outcome." (*Id.* at p. 421.)

LaForte has not established any such prejudice in the outcome. As discussed, he repeatedly rejected counsel's advice to pursue a plea withdrawal in lieu of sentencing. Given LaForte's determination to be sentenced, we cannot say it was reasonably probable the outcome would have been different in the absence of the alleged conflict of interest. (*Mai, supra*, 57 Cal.4th at pp. 1022, 1023 [alleged conflict of interest not prejudicial where the alleged harm resulted from "defendant's clear, consistent, cogent, and articulately expressed wish to forego" the presentation of mitigating evidence]; *Gonzales, supra*, 52 Cal.4th at p. 310 [defendant who testified over allegedly conflicted trial counsel's advice failed to establish prejudice by arguing "he might have accepted [a conflict-free] attorney's reasonable advice not to testify"].)

IV

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

AARON, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

DATO, J.

03/03/2020

KEVIN J. LANE, CLERK

By A. Galvez
Deputy Clerk



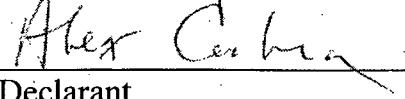
DECLARATION OF SERVICE BY MAIL

Re: *People v. LaForte* Case No: D075609

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am self-employed in the County of San Diego, State of California. My business address is 3268 Governor Drive #390, San Diego, CA 92122. On the date shown below, I served a true copy of the attached ***Petition for Review*** on each of the following, by placing same in an envelope(s) addressed as follows:

Mr. Peter Patrick LaForte
#BJ1115
CSP Corcoran
P.O. Box 8800
Corcoran, CA 93212-8309

Each envelope was sealed and the postage thereon was fully prepaid. The envelopes were deposited with the United States Postal Service in San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 9, 2020, at San Diego, California.



Declarant

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division One - No. D075609

MAY 27 2020

Jorge Navarrete Clerk

S261616

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

PETER PATRICK LaFORTE, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKUYE

Chief Justice