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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. GWENDOLYN HALL, Defendant and Appellant.	B269163 (Los Angeles County Super. Ct. No. BA424047)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry A. Bork, Bernie C. LaForteza, and Lisa B. Lench, Judges. Affirmed.

Tara Mulay and Marta Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Gwendolyn Hall of making criminal threats. (Pen. Code, § 422.) The trial court suspended imposition of sentence and placed Hall on probation. We affirm the judgment.

FACTS

On April 24, 2014, Hall walked into the office of Silver Lake Motors and told an employee, Oscar Campos (the victim), that she had an appointment to talk with the owner. Campos told Hall that owner was not at the business right then, and that she could wait for him if she wanted, but that he (Campos) did not know if the owner would be coming back that day. Hall waited at the business for "more than an hour, . . . [m]aybe close to a couple of hours." Throughout the time that Hall was waiting, she repeatedly said "bad words," such as "You guys are fucking pieces of shit, motherfuckers, selling cars that are no good."

At some point, Campos "started getting afraid after [Hall] started going farther . . . ." Eventually, Hall threatened Campos with words to the effect: "They going to kill my daughter. They going to kill my wife. And she's the one that's going to kill me. [¶] I'm going to kill you with my own hands." Campos feared for his life and the lives of his family. A co-worker called the police.

Los Angeles Police Department Sean Murtha responded to the location, conducted an investigation,[1] and arrested Hall.

In August 2014, the People filed an information charging Hall with the crime of making criminal threats. (Pen. Code, § 422.)

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[1] Officer Murtha talked to Campos, the co-worker who called in the report, and Hall.

At the arraignment hearing on August 26, 2014, the trial court (Hon. David R. Fields) appointed alternate public defender Jean Costanza to represent Hall. Later during the hearing, Judge Fields denied Hall's motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to relieve alternate public defender Costanza. As we summarize below, Hall's *Marsden* motion at her arraignment was the first of many proceedings arising from Hall's professed dissatisfaction with her legal representation. Hall does not challenge Judge Fields's *Marsden* ruling on appeal.

At a pre-trial hearing on October 17, 2014, the trial court (Hon. Terry A. Bork) denied Hall's second *Marsden* motion to relieve alternate public defender Costanza. Immediately after the denial of Hall's second *Marsden* motion, she expressed a desire to represent herself.[2] Judge Bork denied Hall's motion for self-representation.

At a pre-trial hearing on January 15, 2015, the trial court (Hon. Bernie C. LaForteza) denied Hall's third *Marsden* motion to relieve alternate public defender Costanza. Immediately after the denial of Hall's third *Marsden* motion, she again expressed a desire to represent herself. [3] Judge LaForteza denied Hall's request to represent herself on the ground that she was disruptive.

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[2] Hall does not challenge Judge Bork's *Marsden* ruling on appeal.

[3] Hall does not challenge Judge LaForteza's *Marsden* ruling on appeal.

At a pre-trial hearing on March 3, 2015, the alternate public defender's office declared a conflict, and the trial court appointed bar panel attorney James Cooper to represent Hall.

The criminal threats charge was called for a jury trial in early August 2015. By this time a new trial judge, Hon. Lisa B. Lench, was presiding over the criminal case. During the ensuing jury trial, the prosecution presented evidence establishing the facts summarized above. Hall testified in her own defense; she denied that she had made any threats against victim Campos. The jury returned a verdict finding Hall guilty as charged.

On the initial date set for the sentencing hearing, Hall's trial counsel, bar panel attorney Cooper, advised Judge Lench that Hall wanted to make a *Marsden* motion. Judge Lench continued the matter and ordered a diagnostic report on Hall's suitability for probation pursuant to Penal Code section 1203.3.

At the continued hearing, Judge Lench suspended imposition of sentence and placed Hall on felony probation for three years subject to various terms and conditions, including that Hall serve 234 days in jail, with 234 days of total presentence custody credit, including 117 actual days and 117 days of good time/work time credit. Judge Lench imposed ordinary fines and fees which are not questioned on appeal.

Hall thereafter filed a timely notice of appeal.

DISCUSSION

I. The *Faretta*[4] Claims

Hall contends her criminal threats conviction must be reversed because Judge Bork erred in denying her request for self-representation at the pre-trial hearing on October 17, 2014,

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[4] *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

and Judge LaForteza erred in denying her request for self-representation at the pre-trial hearing on January 28, 2015. We find no ground for reversal of Hall's conviction.

The Governing Law

In *Faretta, supra,* 422 U.S. 806, the United States Supreme Court ruled that a criminal defendant's Sixth Amendment right to counsel includes a right to self-representation. (*Id*. at pp. 819-822; and see, e.g., *People v. Valdez* (2004) 32 Cal.4th 73, 97-98.) *Faretta* and its progeny teach that the right to self-representation in a criminal case keeps company with caution. Accordingly, a trial court is required to grant a defendant's *Faretta* motion for self-representation only when the defendant's motion is (1) unequivocal, (2) knowing and intelligent, and (3) made within a reasonable time before trial. (*People v. Welch* (1999) 20 Cal.4th 701, 729.)

When a reviewing court is presented with a claim that a trial court erred in denying a defendant's motion for self-representation, the reviewing court must examine the claim de novo. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1001-1002; *People v. Dent* (2003) 30 Cal.4th 213, 218.) The reviewing court must "examine the whole record — not merely the transcript of the hearing on the *Faretta* motion itself" to determine the validity of the defendant's request to waive his or her right to counsel and to proceed as a self-represented defendant. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1070; see also *People v. Marshall* (1997) 15 Cal.4th 1, 24.)

The Trial Setting — October 17, 2014

At the hearing on October 17, 2014, immediately after Judge Bork had denied Hall's *Marsden* motion, and Hall had said that she wanted to represent herself, Judge Bork provided Hall

with the Los Angeles County Superior Court's standard *Faretta* waiver form. Hall initialed the form at the indicated points specifically advising on the "dangers and disadvantages" of self-representation , and signed the form where indicated. She then returned the form to Judge Bork.

After noting on the record that Hall appeared to have reviewed and filled out the *Faretta* form, Judge Bork explained to Hall that he wanted to "make sure" that she understood the disadvantages of self-representation. Judge Bork specifically stated: "[I]f you go to trial, and if you are found guilty, the judge after the trial could sentence you up to three years in state prison, so it's a serious case with potentially serious consequences. [¶] Now, the disadvantages that you have against you in representing yourself are many, and they're laid out in this form that I know you just went over, because I saw you sitting there reading it, and I see you have initialed it." The following exchange then ensued:

> "[Judge Bork]: Okay. Now, did you read everything in this form?
> "[Hall]: No. I just don't – I'm scared of her. I don't want her as my lawyer. I'm terrified to go to court before any jury, and she's up to no good, and I don't understand why she does — wants to represent me. [¶] We don't get along. We don't talk. She's trying to keep evidence out of this courtroom, and if – it looks like if I go to court with her, I'm going to prison anyway, if I go to trial.
> "[Judge Bork]: We've already heard a hearing on that where I've heard you completely and at some length on that issue, and I've made some findings, as you know. [¶] Look,

I'm not willing to agree to this before I know that you have read and carefully thought through everything that's in this form, and I see that you haven't done that, even though you've initialed the boxes. [¶] You've just informed me that you haven't read it, and the potential consequences to you are very real and very serious, and I'm not going to grant your *Faretta* request to represent yourself until I know you've read this form, and I know you've considered it thoughtfully and we can go over it further. [¶] If you want to take it back and read it from start to finish so that we can talk about it substantively, I'm okay with that. Otherwise, I'm going to deny your request.

"[Hall] : Are you waiting on me to say something?

"[Jude Bork]: Yes.

"[Hall]: I have nothing to say. I'm just disgusted. If I have to go with her, I just know I'm going to prison, so I have to be prepared for it. If I know I'm going to trial with her, I'll prepare myself for prison, because that's where I'm going to go with her as my lawyer.

"[Judge Bork]: The immediate issue is you didn't read the *Faretta* form.

"[Hall]: I -- I'm not a lawyer, and I don't know nothing about the law. I just know that what she doing ain't right.

"[Judge Bork]: The court finds that the defendant has failed, despite my request to read the advisement and waiver of right to counsel, and the right to represent yourself is denied."

Analysis —October 17, 2014

Reviewed de novo, the facts summarized above demonstrate that Hall did not knowingly and intelligently waive her right to counsel in favor of proceeding as a self-represented defendant. Thus, Judge Bork did not err in denying Hall's motion to represent herself. Before a trial court may find that a defendant made a knowing and intelligent *Faretta* motion, a defendant must be advised of the risks of self-representation. (*People v. Burgener* (2009) 46 Cal.4th 231, 242.) Although no "particular form of words is required in admonishing a defendant who seeks to waive counsel and elect self-representation," the record, when viewed "as a whole," must demonstrate that the defendant "understood the disadvantages of self-representation, including the risks and complexities of the particular case." (*People v. Koontz, supra*, 27 Cal.4th at p. 1070.)

Here, after Hall indicated that she wished to represent herself, she was given the *Faretta* form, which she initialed and signed. But when Judge Bork asked Hall whether she had "read everything" in the form, Hall answered "no." When Judge Bork then noted that Hall had said that she had not read the form, he warned Hall that her request for self-representation would be denied unless she read and understood the form's explanation of the consequences of self-representation. When the court offered Hall an opportunity to read the form so that they could then "talk about it substantively," Hall's replied that she had "nothing to say."

The record plainly shows that Hall's attempt to waive her right to counsel in favor of self-representation was not knowing and intelligent. By her own admission, Hall did not read the *Faretta* form, and, when offered a chance to do so, she declined.

Hall never said or otherwise indicated that she had any understanding of the proceedings, or of the rights that she would be giving up, or of the disadvantages of self-representation that she would be taking on. Fairly construed, the record shows no more than that Hall was "disgusted" she had to be involved in a criminal case that was not unfolding in the manner in which she wished.

Hall's reliance on *People v. Silfa* (2001) 88 Cal.App.4th 1311 (*Silfa*) in an attempt to persuade us to have a different perspective falters. Hall argues that *Silfa* supports the proposition that a trial court may not use a standardized *Faretta* waiver form as a "qualifying test" for granting a defendant's request for self-representation, and that this is what happened in her case. We agree with the first component of Hall's argument, but not the second.

In *Silfa*, the defendant completed a *Faretta* waiver form and, in exchanges with the trial court, orally acknowledged that he understood his rights to counsel, to a jury trial, to use the subpoena power, to cross-examine witnesses, against self-incrimination, and to present a defense. (*Silfa, supra*, 88 Cal.App.4th at pp. 1314-1315.) The court then engaged the defendant in a discussion about the charges he faced, the maximum sentence, the court's procedures, and evidentiary situations that could arise at trial. (*Id*. at pp. 1315-1321.) Based upon that discussion, the trial court ruled that although the defendant was "fully informed of the right to counsel," he did not truly understand the consequences of his waiver. (*Id*. at p. 1321.) The Court of Appeal reversed the defendant's conviction for stalking, based on its conclusion that the record showed that the defendant was "mentally competent and fully informed of his

right to counsel," and demonstrated that he was literate and understood the dangers of self-representation. (*Id.* at p. 1322.) The Court of Appeal found that the trial court had improperly used the *Faretta* form as a type of baseline "test" that the defendant failed by not further showing that he understood "each nuance of the complex subject matter presented." (*Ibid.*)

In Hall's present case, in contrast, she expressly stated that she *did not read* the *Faretta* form. Judge Bork's ensuing inquiries were not a "test" of Hall to determine whether she understood the "nuances" of the criminal case against her, and of the risks attendant to waiving counsel and taking on the task of self-representation. Instead, they were questions by the court to determine whether Hall had even bothered to try to learn the basic risks of self-representation. *To have not done what Judge Bork did could arguably have been error*. In short, Judge Bork did no more than try to gauge whether or not Hall was making a knowing and intelligent *Faretta* motion. Judge Bork did not "test" Hall as to whether she would do a good job of representing herself.

Further, we will not ignore that Hall made her request for self-representation immediately after Judge Bork denied her *Marsden* motion, and that her request for self-representation was largely related to her "disgust" with a criminal case with her lawyer, and not actually with a desire to represent herself. In other words, even in the event we were to find that Judge Bork used the *Faretta* form to "test" Hall about the nuances of self-representation, we would still find that Judge Bork nonetheless properly denied Hall's request to represent herself because, in our de novo review, we find that Hall's request for self-representation was equivocal. (*People v. Butler* (2009) 47 Cal.4th

814, 825 [a trial court may deny a request for self-representation that is "equivocal, made in passing anger or frustration, or intended to delay or disrupt the proceedings"].) The immediacy of a *Faretta* motion after the trial court denies a *Marsden* motion is a factor that may be considered in deciding whether a defendant actually wanted to rid him or herself of appointed counsel, in favor of self-representation, or was just further expressing dissatisfaction with counsel. (*People v. Scott* (2001) 91 Cal.App.4th 1197, 1205 (*Scott*).) Here, the timing of Hall's request for self-representation, coming as it did immediately following the denial of a *Marsden* motion, supports the conclusion that the request was equivocal and made out of frustration. (*People v. Williams* (1990) 220 Cal.App.3d 1165, 1170 [a trial court may deny a *Faretta* request that is made by a defendant when the trial court refuses to provide the defendant with another appointed attorney].)

On the issue of equivocation, we find *Scott, supra*, 91 Cal.App.4th 1197 instructive. In *Scott*, the defendant made a *Marsden* motion before trial. When it was denied, defendant stated, "If that's the case, I hereby move the court to let me go pro se." (*Id*. at pp. 1204-1205 & fn. 3.) When the trial court queried whether the defendant was sure he wished to represent himself, the defendant replied, "Yes. I do, judge. I don't want [appointed defense counsel] to represent me." (*Id*. at p. 1205.) The defendant further stated that if he could not obtain a new appointed attorney, he would represent himself. (*Ibid*.) On appeal, the appellate court concluded that the defendant's remarks, viewed in context and as a whole, were too equivocal to constitute a firm *Faretta* request and that his requests for self-representation were made out of frustration at the denial of the

Marsden motion, and were not a true, unequivocal request for self-representation. (*Scott,* at p. 1205.)

Hall's case is of the exact same nature. Here, as did the defendant in *Scott*, Hall made a request for self-representation immediately upon the heels of the trial court's denial of her *Marsden* motion and expressly showed that the motion was made only because she did not want the appointed attorney who was then representing her. When tasked with actually reading and discussing the *Faretta* form, Hall folded her hand. The timing of Hall's request, her comments, as well as her admitted failure to read the form that she signed demonstrate that frustration with appointed counsel was the catalyst for the motion rather than a well considered decision to forgo her constitutional right to counsel. (See *People v. Valdez, supra*, 32 Cal.4th at pp. 98-99 [defendant's single reference to right of self-representation, made immediately following denial of *Marsden* motion, supports conclusion that defendant did not make an unequivocal *Faretta* motion]; and see *People v. Tena* (2007) 156 Cal.App.4th 598, 608 [accord].)

The Trial Setting — January 28, 2015

At a pre-trial hearing on January 15, 2015, Judge LaForteza denied Hall's third *Marsden* motion to relieve alternate public defender Costanza, following which Hall immediately stated that she wanted to represent herself. The matter was continued.

When hearings resumed, Judge LaForteza tentatively decided to grant Hall's *Faretta* request and started to try to advise her regarding her rights and the risks of self-representation. During this process, Hall interrupted Judge LaForteza multiple times, and made an accusation the "the

courts have clearly withheld evidence at every court hearing [she'd] been to." A moment later, Hall stated: " . . . I guess I have to be stuck with her. Because I know I don't have the expertise to represent myself." After Hall made this last statement, Judge LaForteza denied Hall's *Faretta* request on the grounds that, due to her interruptions, she would not be able to follow the court's rules and procedures. Further, Judge LaForteza found that Hall's Faretta request was not unequivocal.

Analysis

A defendant's right of self-representation is not inviolate. A trial court does not abuse its discretion by denying a motion to represent himself on the ground that the defendant is disruptive during the *Faretta* proceeding, and may terminate self-representation by a defendant who deliberately engages in obstructionist conduct. (See, e.g., *People v. Welch, supra,* 20 Cal.4th at pp. 733-736; and *People v. Williams* (2013) 58 Cal.4th 197, 253-256.) Here, the record shows that Hall could not control herself at the time of the *Faretta* proceeding before Judge LaForteza on January 28, 2015. Thus, we find no error in Judge LaForteza's ruling to deny Hall's request for self-representation.

To avoid such a conclusion, Hall tethers her arguments regarding her second *Faretta* motion to Judge LaForteza to the events surrounding her earlier *Faretta* motion to Judge Bork. According to Hall's opening brief, her first *Faretta* request "involved no disruption," and she "was never granted a right that could be terminated." We understand Hall to be arguing that it was error not to grant her first request to proceed self represented, and that the error in denying her first *Faretta* request was not cured by the events that subsequently happened at the time of her second *Faretta* request. As put by Hall in her

opening brief: "[D]uring none of the proceedings subsequent to the first *Faretta* request did [I] waive or forfeit the right to self-representation [that I] timely asserted nine months before trial . . . ."

Because we have found no error in Judge Bork's initial ruling in October 2014 to deny Hall's request for self-representation, her claims with respect to her second request to Judge LaForteza in January 2015 fail. In short, Hall's second *Faretta* request rises and falls on its own. Because Hall was disruptive during the hearing when she made her second *Faretta* request, Judge LaForteza properly denied that request.

II. The *Marsden* Claim

Hall contends that in the event reversal is not required based on her *Faretta* claims, we should nonetheless "reverse and remand for a hearing on [her] post-trial [*Marsden*] request to replace trial counsel James Cooper, because the trial court failed to hold a hearing upon [her] request." We find no error warranting reversal and remand for further *Marsden* proceedings.

The Governing Law

A defendant in a criminal case is constitutionally entitled to the assistance of counsel in his or her defense. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) It has long been recognized that a court must appoint counsel to represent an indigent defendant in a criminal case. (See *Gideon v. Wainwright* (1963) 372 U.S. 335, 344-345.) Under *Marsden*, a defendant has a right to seek new appointed counsel when he or she claims that continued representation by presently appointed counsel would substantially impair the right to effective assistance of counsel. (See, e.g., *People v. Cole* (2004) 33 Cal.4th 1158, 1190; and see

Marsden, supra, 2 Cal.3d at p. 123.) A trial court must appoint new counsel when it finds that a failure to do so would substantially impair the defendant's right to assistance of counsel. (*People v. Sanchez* (2011) 53 Cal.4th 80, 89-90.)

During a *Marsden* hearing, the court must afford the defendant an opportunity to explain the grounds for the motion and to relate specific instances of his or her attorney's inadequate performance. (*Marsden, supra*, 2 Cal.3d at p. 124.) A trial court abuses its discretion when it refuses to listen to the defendant's reasons for requesting new counsel. (*People v. Vera* (2004) 122 Cal.App.4th 970, 980 (*Vera*); *People v. Moore* (1988) 47 Cal.3d 63, 76; *People v. Lewis* (1978) 20 Cal.3d 496, 498-499.) This said, a defendant can abandon a *Marsden* request for new counsel by declining to accept a court's invitation to make a showing at a later hearing. (*Vera, supra*, 122 Cal.App.4th at pp. 981-982.)

The Trial Setting

As noted above, at a post-trial hearing on August 26, 2015, three weeks after the jury's verdict, Hall's trial counsel advised Judge Lench that Hall wanted to make a *Marsden* motion. The following exchanges then ensued:

> "[Hall]: [I]s it possible that I can give you some evidence that you can read?
>
> "[Judge Lench]: . . . [I]f you give it to me, then you give it to the [district attorney]. You give it [to] your lawyer. If he thinks it's important for me to see ---
>
> "[Hall]: I don't want him to represent me no more.
>
> "[Judge Lench]: I understand that, ma'am. We've been down this road before. We're now at sentencing. If you don't want him to represent you at sentencing, we can talk about that on Friday.

"[Hall]: Okay.
"[Judge Lench]: Because I'm going to put your sentencing over to Friday, but I am remanding you today."

When proceedings resumed two days later, Hall waived time for sentencing and Judge Lench ordered a diagnostic evaluation pursuant to Penal Code section 1203.03 to determine whether Hall was a suitable candidate for probation. Hall did not renew her request for new counsel at the later hearing.

Analysis

We find a reversal and remand for a hearing on Hall's post-trial *Marsden* motion is not required under *Vera, supra*, 122 Cal.App.4th 970. In *Vera*, the defendant brought a *Marsden* motion, and the trial court told the defendant that he could renew his motion at a later date, but the defendant did not do so. (*Vera,* at pp. 975-976.) On appeal, the defendant argued that the trial court erred by failing to consider his *Marsden* motion. (*Vera,* at p. 980.) The Court of Appeal held that the defendant had abandoned his unstated complaints, reasoning as follows: "While we are aware of no precedent finding abandonment of a *Marsden* motion, it is established that a defendant's conduct may amount to abandonment of a request to represent himself under *Faretta* . . . . [Citations.] If a defendant can abandon his request to substitute himself for counsel, a defendant can abandon his request to substitute another counsel. We conclude that defendant abandoned his unstated complaints about counsel by not accepting the court's invitation to present them at a later hearing." (*Id*. at pp. 981-982.)

Here, Judge Lench told Hall at the hearing on August 26, 2015: "If you don't want [your lawyer] to represent you at

sentencing, we can talk about that on Friday." At the hearing on Friday, August 28, 2015, neither Hall nor her counsel brought up the subject of substituting new counsel. Moreover, we see nothing in the record to show that Hall made any further comment or statements expressing a desire for substitute counsel at any hearing after the hearing on August 26, 2015 at which she raised the issue. Under *Vera*, we are satisfied that Hall abandoned her post-trial *Marsden* motion.

Hall's reliance on *People v. Reed* (2010) 183 Cal.App.4th 1137 (*Reed*) for a different conclusion is misplaced. In *Reed*, the defendant informed the trial court that he wanted substitute counsel to pursue a new trial motion based on his attorney's incompetence, and defense counsel told the trial court that he could not make the motion for the defendant. The trial court did not hold a hearing on the defendant's request for new counsel. (*Id*. at pp. 1142-1144.) On appeal, the appellate court conditionally reversed the judgment, holding that the trial court's failure to hold a *Marsden* hearing was error and that the error required further proceedings in the trial court to determine the merits of the defendant's request for new counsel. The trial court was directed that, if it denied the motion after an appropriate hearing, then it was to reinstate the judgment. (*Id*. at pp. 1148-1150.)

Reed is distinguishable from Hall's instant case because, here, Hall made no showing that would necessitate a *Marsden* hearing even though she was given an opportunity to revisit her original August 26 request a mere two days later. Because Hall failed to raise the issue of her request for substitute counsel at the August 28th or December 15th sentencing hearings, Judge Lench was not obligated to conduct a *Marsden* hearing.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.