Filed 10/17/16 P. v. Woods CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. LANDRUS WOODS, Defendant and Appellant.	B268625 (Los Angeles County Super. Ct. No. A921074)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Affirmed as modified, with directions.

Paul R. Kraus, 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, Chung L. Mar and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Landrus Woods (defendant) initially obtained a windfall: an order that reduced his prior felony drug conviction to a misdemeanor even though he has a murder conviction that makes him ineligible for such relief. The question we consider is not whether defendant is statutorily eligible for the reduction; it is undisputed he is not. Rather, the question we decide is whether, when the trial court later discovered its error, it was too late to fix it.

I. BACKGROUND

Defendant sustained a 1988 felony conviction in California for possession of cocaine in violation of Health and Safety Code section 11350. He received a two year prison sentence.

Many years later, in May 2015, defendant filed an application to reduce this cocaine possession conviction to a misdemeanor pursuant to Penal Code section 1170.18,[1] which was enacted as part of Proposition 47, the Safe Neighborhood and Schools Act. Defendant submitted his application using a preprinted form document, and among the boxes he checked on the form was one to aver he "does not have any conviction for an offense listed in . . . [section] 667(e)(2)(C)(iv) . . . ."

According to a minute order in the record, the trial court held a hearing on defendant's Proposition 47 application on August 11, 2015 (the First Hearing). A Deputy District Attorney represented the People, and defendant, who had filed the application in propria persona, was not present. The hearing minute order indicates the prosecutor reviewed defendant's application and "ha[d] no objection to the granting of reduction to misdemeanor." The trial court accordingly found "defendant is eligible to have [his] felony conviction designated a misdemeanor conviction" and so ordered. The court's order granting defendant's Proposition 47 application was entered in the court's minutes six days later.

---

[1] Undesignated statutory references that follow are to the Penal Code.

That, however, was not the end of the matter. The case came back before the court just over two months later, at a hearing on October 14, 2015 (the Second Hearing).[2] By some means not precisely apparent from the record, the court discovered defendant had sustained a conviction for murder in Alabama. The brief colloquy on the record at the Second Hearing was as follows: "The Court: Landrus Woods. Prop. 47 application is denied. Defendant has a prior 187. [¶] [Prosecutor]: Can you cite the case number on there[?] [¶] The Court: Alabama state prior. It is Alabama CC1998-00141500, Landrus Woods."[3] That same day, the court issued a minute order stating it had determined "upon further review" that defendant sustained a prior conviction for murder and "therefore[ ] orders the minute order dated 08-11-15 amended nunc pro tunc to deny the Proposition 47 application."

II. DISCUSSION

We affirm the denial of defendant's section 1170.18 application. As we explain, the trial court had authority to reverse its order granting defendant relief, which it had no power to grant in the first place under the applicable statute. And the case defendant chiefly relies on to urge reversal, *In re Candelario* (1970) 3 Cal.3d 702 (*Candelario*), is inapposite because the court there, unlike the court here, initially imposed a sentence that it could lawfully impose in an exercise of its discretion under applicable legal authority. (*Id.* at p. 705 [trial court could not correct judgment to impose a sentencing enhancement for a prior conviction that it did not impose at sentencing].)

Proposition 47 reclassified certain drug and theft offenses, which had previously been felonies or "wobblers," as misdemeanors. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 889-890.) Section 1170.18 permits persons who have completed a

---

[2] The date was just beyond the period during which the People could have taken a timely appeal form the trial court's order granting defendant's application.

[3] The actual conviction document that appears to have been before the trial court has not been made part of the appellate record.

sentence for a felony conviction to apply to have that conviction designated a misdemeanor if it would have been a misdemeanor had Proposition 47 been in effect at the time of the offense. (§ 1170.18, subd. (f); see also § 1170.18, subd. (a) [referencing misdemeanor resentencing for a conviction, like defendant's, under section 11350].) Importantly, however, subdivision (i) of section 1170.18 makes the section inapplicable to certain persons, including those who have sustained a conviction for "any homicide offense." (§ 667, subd. (e)(2)(C)(iv)(IV); see also §§ 187-191.5.)

The record establishes defendant sustained a conviction in Alabama for murder, and this conviction makes him ineligible to apply for relief under section 1170.18. (§ 667, subd. (d)(2) [conviction in another jurisdiction is a prior conviction of a serious and/or violent felony if the prior conviction is for an offense that includes all of the elements of a particular serious or violent felony as defined under California law].) When the trial court discovered defendant's ineligibility, notwithstanding his representation in his application that he had suffered no such disqualifying conviction, it was within its authority to reverse its prior order and deny defendant's application for relief. (*People v. Amaya* (2015) 239 Cal.App.4th 379, 388 (*Amaya*); *People v. Estrada* (1963) 211 Cal.App.2d 722, 728-729 [trial court validly set aside unauthorized probationary sentence it initially imposed after learning defendant ineligible for probation]; *In re Renfrow* (2008) 164 Cal.App.4th 1251, 1256 ["'an unauthorized sentence' is 'subject to judicial correction when it ultimately [comes] to the attention of the trial court or [reviewing] court'"]; cf. also *United States v. Bishop* (7th Cir. 1985) 774 F.2d 771, 773-774 [where the defendant misrepresented the nature of his sentence in another case, court had inherent authority to modify sentence it previously imposed relying on that misrepresentation, even though time provided to do so by rule had expired].)

The circumstances here are similar to those in *Amaya*. In that case, the trial court initially granted a defendant's petition for relief under Proposition 36 while unaware a jury had previously found true an allegation that would foreclose such relief under the terms of the applicable statute. (*Amaya*, *supra*, 239 Cal.App.4th at p. 383.) When the

trial court learned of the error, it vacated its prior order and denied the petition, rejecting the defendant's contention it had no authority to do so because "the error was judicial, not clerical, and therefore not subject to correction." (*Ibid*.) The Court of Appeal affirmed, reasoning the trial court had no power to grant Proposition 36 relief in the first place. (*Id.* at p. 386.) Rather, the initial order granting relief was void and could be set aside at any time. (*Ibid*.)

That is effectively what happened here: the trial court realized there was no legal basis to grant defendant's section 1170.18 application and therefore entered a new and different order denying the application. True, the trial court did also purport to amend its earlier minute order nunc pro tunc so it read as if it had originally denied defendant's application, which respondent concedes was error, but the effect of the trial court's actions—the substance of what we review—was to set aside its prior determination and deny relief. Because a reduced misdemeanor sentence for defendant's section 11350 conviction "could not lawfully be imposed under any circumstance in the particular case" (*Amaya*, *supra*, 239 Cal.App.4th at p. 385), its order at the First Hearing was unauthorized and the court was entitled to set it aside and enter a legally correct order.[4]

We are not persuaded by defendant's counterargument, which relies on *Candelario* and the rule that a trial court generally lacks power to resentence a criminal defendant once the sentence has been entered into the minutes of the court. (*Candelario, supra,* 3 Cal.3d at p. 705; see also, e.g., *People v. Thomas* (1959) 52 Cal.2d 521, 529-531.) This general rule is inapplicable in case of an unauthorized sentence (*People v.*

---

[4] There is one way in which the circumstances here differ from those in *Amaya*. In that case, the Court of Appeal believed the initial decision to grant the defendant's Proposition 36 petition was not an unauthorized sentence because the prosecutor had stipulated the gang enhancement had been stricken and all the evidence before the trial court indicated defendant was entitled to resentencing. (*Amaya*, *supra*, 239 Cal.App.4th at pp. 382-383, 386.) Here, the prosecutor did not affirmatively stipulate to facts that would make defendant eligible for relief. Rather, he merely declined to object, and there is no basis to conclude the sentence was authorized based on the mere absence of an objection.

Picklesimer (2010) 48 Cal.4th 330, 338), that is, a sentence that "could not lawfully be imposed under any circumstance in the particular case" (*People v. Scott* (1994) 9 Cal.4th 331, 354).

Indeed, the rule and the exception only serve to demonstrate why *Candelario* is inapposite here. In that case, the sentence the trial court initially imposed, without the prior conviction enhancement, was a lawful sentence. As our Supreme Court explained, even though the defendant had admitted the prior conviction, the trial court was not compelled to make a finding on the charge. (*Candelario*, *supra*, 3 Cal.3d at p. 706 ["[I]t may be inferred that the omission [of the prior conviction enhancement] was an act of leniency by the trial court"].) By contrast, the original decision of the trial court here, reducing defendant's drug conviction to a misdemeanor despite his murder conviction, could not lawfully be imposed under any circumstance because he was statutorily ineligible for relief. (Compare *In re Wimbs* (1966) 65 Cal.2d 490, 498 [initial order for consecutive sentence was within the court's power to make]; *Conservatorship of Christopher B.* (2015) 240 Cal.App.4th 809, 816 [no argument that court did not have authority to enter initial order of dismissal].) The trial court therefore had authority to correct the error when it did. (*Amaya*, *supra*, 239 Cal.App.4th at p. 385 ["'[A]n unauthorized sentence . . . is subject to being set aside judicially and is no bar to the imposition of a proper judgment thereafter . . . ."].)

DISPOSITION

The October 14, 2015, order denying defendant's application for relief pursuant to section 1170.18 is affirmed as modified. The trial court is directed to modify the order to (1) strike the language purporting to amend the August 11, 2015, order nunc pro tunc, and (2) state that the oral ruling on the application made on August 11, 2015, and the minute order reflecting that ruling entered on August 17, 2015, are vacated on the ground the ruling was in excess of the court's jurisdiction.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.