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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO ALFONSO DERAS,

Defendant and Appellant.

B286196

(Los Angeles County
Super. Ct. No. BA081277)

APPEAL from an order after judgment of the Superior Court of Los Angeles County. Renee Korn, Judge. Reversed and remanded.

Michael K. Mehr, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Steven D. Matthews, Deputy Attorney General, for Plaintiff and Respondent.

In 1993 Eduardo Alfonso Deras pleaded guilty to one count of possession of cocaine base for sale in violation of Health and Safety Code section 11351.5. Deras served his sentence, and in 2017, filed a motion to vacate his plea pursuant to Penal Code section 1473.7, subdivision (a)(1).¹ The superior court found the motion to be premature and denied it without prejudice. Deras appeals.

The sole issue presented in this appeal is whether an out-of-custody noncitizen may seek relief under section 1473.7, subdivision (a)(1) prior to receipt of a notice to appear in federal immigration removal proceedings or a final removal order. Appellant and the Attorney General both contend that the court below erred in denying Deras's motion without prejudice on the basis of its finding that the motion was premature. We agree. Accordingly, we reverse, and remand the matter to the superior court for a hearing on the merits of appellant's motion to vacate pursuant to section 1473.7, subdivision (a)(1).

BACKGROUND

Following the entry of his guilty plea on October 14, 1993, Deras was sentenced to three years of probation, with the first 180 days to be served in county jail. Deras completed the terms of his sentence and filed his motion to vacate his plea pursuant to section 1473.7, subdivision (a)(1) on May 1, 2017.² The motion was based on defense counsel's failure to advise him generally about the possible immigration consequences of his plea, and

¹ Undesignated statutory references are to the Penal Code.

² At the hearing on the motion to vacate, Deras abandoned his request for relief pursuant to section 1016.5.

specifically “that a controlled substance conviction could affect his permanent residency status or his ability to naturalize.” The superior court denied the motion without prejudice on the ground that “the court does not believe that the defendant has shown that the defendant has received notice to appear in immigration court or has a date of a removal order at this point in time.”

DISCUSSION

Section 1473.7 creates an explicit right for noncitizens previously convicted pursuant to a guilty or no contest plea who are no longer imprisoned or restrained to move to vacate their convictions based on, among other things, their counsel’s failure to inform them of “the actual or potential adverse immigration consequences” of their pleas. (Assem. Bill No. 813, Stats. 2016, ch. 739, § 1; *People v. Morales* (2018) 25 Cal.App.5th 502, 505 (*Morales*).) Enacted by the Legislature in 2016, the statute became operative on January 1, 2017. (*Ibid.*; *People v. Perez* (2018) 19 Cal.App.5th 818, 820.)

Within four months of the effective date of the statute, Deras filed his motion for relief under section 1473.7, subdivision (a)(1). But the superior court denied the motion without prejudice under section 1473.7, subdivision (b), which sets forth the timeliness and due diligence requirements for motions filed in the face of federal removal proceedings. The superior court interpreted subdivision (b) as barring relief under the statute unless the moving party has suffered an actual adverse immigration consequence as a result of the conviction in the form of a removal order or a notice to appear in federal immigration court for removal proceedings. (See *Morales, supra*, 25 Cal.App.5th at pp. 504, 508.)

In our de novo review of the proper interpretation of section 1473.7, we adhere to the following guiding principles (*In re R. T.* (2017) 3 Cal.5th 622, 627 (*R. T.*)): “ ‘In construing a statute, our role is to ascertain the Legislature’s intent so as to effectuate the purpose of the law.’ ” (*People v. Brookfield* (2009) 47 Cal.4th 583, 592.) We start with the most reliable indicator of legislative intent: the statute’s words. (*R. T., supra*, 3 Cal.5th at p. 627.) “ ‘We interpret relevant terms in light of their ordinary meaning, while also taking account of any related provisions and the overall structure of the statutory scheme to determine what interpretation best advances the Legislature’s underlying purpose.’ ” (*Ibid.*) If the plain language supports more than one reasonable construction, we may also consider matters of public policy, legislative history, the statute’s objectives, and “the evils to be remedied” in discerning the Legislature’s intent. (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.) “Of course, ‘ “ ‘language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ ” ’ [Citation.] In such circumstances, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.’ ” (*People v. Broussard* (1993) 5 Cal.4th 1067, 1071.)

With these principles in mind, we turn to the relevant provisions of section 1473.7.³ Subdivision (a)(1) specifies the

³ A bill to amend section 1473.7, Assembly Bill No. 2867, was introduced on February 16, 2018. In its current iteration, subdivision (b) of the amended bill provides in relevant part: “a motion pursuant to paragraph (1) of subdivision (a) shall be deemed timely filed at any time in which the individual filing the

class of persons entitled to seek relief under the statute and the grounds for relief: “A person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence” on the ground that “[t]he conviction or sentence is legally invalid due to a prejudicial error damaging the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.” Subdivision (a)(1) thus authorizes a noncitizen to challenge a conviction which resulted from an error that compromised her ability to address the “*actual or potential adverse immigration consequences*” of the plea. (Italics added.) The sole limitation is that the moving party no longer be in criminal custody for the conviction that is subject to the motion to vacate.

Section 1473.7, subdivision (b) pertains to one of several possible adverse immigration consequences that might result from a conviction: federal removal proceedings. Subdivision (b) states that a motion pursuant to subdivision (a)(1) “*shall* be filed with reasonable diligence *after* the *later* of the following: [¶] (1) The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence *as a basis for removal*. [¶] (2) The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.”⁴

motion is no longer in criminal custody.” (Legis. Counsel’s Dig., Assem. Bill No. 2867, Stats. 2018 (2017–2018 Reg. Sess.)) The bill is still pending in the Legislature.

⁴ “Removal” presumably refers to removal proceedings under the Immigration and Nationality Act. (8 C.F.R.

(§ 1473.7, subd. (b)(1), (2), italics added.) Subdivision (b) says nothing about the timeliness or due diligence required to prosecute a motion to vacate based on other actual or potential adverse immigration consequences, including those Deras asserted: denial of naturalization or revocation of permanent resident status. Indeed, as the court in *Morales* observed, subdivision (b) merely “imposes an outside deadline, albeit not a precise one, before which a motion must be filed if removal proceedings have been initiated.” (*Morales, supra*, 25 Cal.App.5th at p. 510.) Thus, by construing subdivision (b) to bar Deras from prosecuting his motion in the absence of removal proceedings, the superior court’s ruling contradicted the plain language and broad terms of subdivision (a)(1), which contains no such limitation.

Reading the statute as a whole confirms its broad application. Subdivision (e)(1) provides that the superior court “*shall* grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of *any of the grounds for relief specified in subdivision (a).*” (§ 1473.7, subd. (e)(1), italics added.) By explicitly requiring the court to grant a motion upon proof of any grounds specified in subdivision (a), the statute precludes denial of the motion on the ground that the moving party is not subject to removal.

The superior court’s interpretation here leads to an absurd result. As in *Morales*, the court’s reasoning transforms “a

§ 1001.1(b).) The circumstances under which an order of removal made by an immigration judge at the conclusion of proceedings becomes final are set forth at 8 Code of Federal Regulations section 1241.1.

provision about timeliness and due diligence into one that guarantees delay and renders section 1473.7 ineffectual in many cases. A noncitizen would be prevented from filing a motion until the latest possible moment, e.g., after a removal order has become final. We can think of no rational reason why the Legislature would prevent a noncitizen facing removal from filing a motion that might be dispositive of the matter until the completion of all removal proceedings, when authorities could very well remove the noncitizen before a court is able to consider his or her motion.” (*Morales, supra*, 25 Cal.App.5th at p. 510.)

Finally, the superior court’s construction runs afoul of the clear legislative intent underlying section 1473.7. (Assem. Bill No. 813.) According to the Legislative Counsel’s Digest, the bill was specifically intended to address a gap in existing law, which had prevented noncitizens who were no longer incarcerated from seeking a writ of habeas corpus to obtain relief from the adverse immigration consequences of convictions based on guilty pleas. (Legis. Counsel’s Dig., Assem. Bill No. 813, Stats. 2016, ch. 739 (2015–2016 Reg. Sess.); *Morales, supra*, 25 Cal.App.5th at pp. 511–512.) The digest thus declared that the new law would “create[] an explicit right for a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence based on a prejudicial error damaging to the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.” (Legis. Counsel’s Dig., Assem. Bill No. 813, *supra*; *Morales, supra*, 25 Cal.App.5th at p. 512.) Nothing in the legislative materials indicates that removal proceedings were the only “adverse immigration consequences” contemplated by the Legislature in enacting this law.

Based on our reading of the statute as a whole, our review of its language and legislative history, and endeavoring to avoid absurd results, we conclude the superior court erred as a matter of law in denying Deras's motion to vacate his conviction under section 1473.7 on the ground that he had neither received a removal order nor was he subject to removal proceedings at the time of the hearing on the motion.

DISPOSITION

The order denying the motion to vacate pursuant to section 1473.7 is reversed, and the matter is remanded to the superior court for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.