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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMANDO ROMEO CORDOVA,

Defendant and Appellant.

B286978

(Los Angeles County
Super. Ct. No. MA068843)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa M. Strassner, Judge. Reversed and remanded, with directions.

Edward H. Schulman, 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, Shawn McGahey Webb and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Armando Romeo Cordova was convicted of two counts of attempted murder he committed at age 15. He was sentenced to an aggregate term of 74 years and eight months to life in state prison. On appeal, Cordova contends Senate Bill 1391, which repeals the People's authority to prosecute 14- and 15-year-old minors as adults under most circumstances, applies retroactively to his case. We agree and remand the matter to juvenile court for further proceedings under California's juvenile court law.

FACTS AND PROCEDURAL BACKGROUND

On October 20, 2017, a jury found Cordova guilty of two counts of attempted murder. (Pen. Code, § 187/664.) The jury found not true allegations that Cordova committed the crimes willfully, deliberately, and with premeditation, but otherwise found true that Cordova personally inflicted great bodily injury upon his victims. As to each count, the jury also found true three firearm allegations and one gang allegation. The court sentenced Cordova to an aggregate term of 74 years and eight months in prison.

Cordova was 15 years old at the time he committed his crimes. He timely appealed, alleging the sentence imposed upon him as a juvenile offender violates the Eighth Amendment's prohibition on cruel and unusual punishment. During the pendency of his appeal, Cordova, with leave of court, filed a supplemental brief arguing that recently enacted Senate Bill 1391 requires that his conviction in adult criminal court be vacated. We invited the Attorney General to file a supplemental respondent's brief and Cordova to file a reply brief.

The issue before us now is whether Senate Bill 1391, signed by Governor Brown on September 30, 2018 and effective January 1, 2019, requires that Cordova’s case be remanded to juvenile court for disposition. Because we conclude that it does, his Eighth Amendment argument is moot and we do not address it here.

DISCUSSION

Existing law allows the district attorney to move to transfer 14- or 15-year-old minors alleged to have committed specified serious offenses to adult court for criminal prosecution. (Sen. Bill No. 1391 (2017-2018 Reg. Sess.) § 1; Stats. 2019, ch. 1012, § 1.) Senate Bill 1391—effective January 1, 2019—repeals the authority of the district attorney to make such a motion where, as here, the minor was 14 or 15 at the time of the offense and the minor was not apprehended prior to the end of juvenile court jurisdiction. (*Ibid.*)

On the day Cordova committed his crimes—March 26, 2016—he was 15 years old. Both parties agree that he was apprehended prior to the date juvenile court jurisdiction over him would have expired.

Both parties also agree that under *In re Estrada* and *People v. Superior Court (Lara)*, Senate Bill 1391 applies retroactively to cases not yet final on appeal. So do we.

In *In re Estrada* (1965) 63 Cal.2d 740, 744–745, the California Supreme Court held that, absent evidence of contrary legislative intent, it is an “inevitable inference” that the Legislature meant for new statutes that reduce the punishment for certain prohibited acts to apply retroactively to every case not yet final on appeal. In *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, the California Supreme Court extended *Estrada*’s

rationale to Proposition 57, which eliminated a district attorney's discretion to file a complaint against a minor directly in adult criminal court. The court in *Lara* reasoned that "the possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment." (*Id.* at p. 303.) The same is true here with the passage of Senate Bill 1391. We therefore agree with the parties that Senate Bill 1391 is retroactive to all cases not yet final on appeal as of January 1, 2019.

Where the parties differ is whether Cordova's claim is ripe for resolution. The Attorney General contends Cordova's claim is not ripe because Senate Bill 1391 does not go into effect until January 1, 2019. He concedes, however, that if Cordova's appeal is not final as of that date, he would be entitled to remand to juvenile court. Cordova argues that his appeal is currently ripe for adjudication because his appeal will not be final before January 1, 2019. We agree with Cordova.

For the purpose of determining the retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. (*People v. Vieira* (2005) 35 Cal.4th 264, 305–306.) Cordova's case was calendared for oral argument before us on November 27, 2018. If we had issued our opinion on the merits that day, it would not become final until December 27, 2018. (Cal. Rules of Court, rule 8.366(b)(1).) Cordova would then have until January 7, 2019 to file a petition for review in the California Supreme Court. (Cal. Rules of Court, rule 8.500(e)(1) ["A petition for review must be served and filed within 10 days after the Court of Appeal decision is final."]).

Only after a petition for review has been adjudicated can Cordova then petition for a writ of certiorari in the United States Supreme Court. We conclude it is highly unlikely that Cordova's judgment will be final by January 1, 2019 and therefore remand the matter to juvenile court for disposition in accordance with Senate Bill 1391.

DISPOSITION

Cordova's adult convictions and sentence are reversed. The cause is remanded to juvenile court for a dispositional hearing. The juvenile court is directed to treat Cordova's convictions and enhancements as juvenile adjudications and impose an appropriate disposition within its discretion. (See *People v. Superior Court (Lara)*, *supra*, 4 Cal.5th at pp. 310, 313.)

STRATTON, J.

We concur:

RUBIN, Acting P. J.

GRIMES, J.