Filed 12/21/16 P. v. Hodge CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ALAN EUGENE HODGE, Defendant and Appellant.	B266852 (Los Angeles County Super. Ct. No. NA022315)

APPEAL from orders of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Mary Bernstein, 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, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Alan Eugene Hodge, was convicted in 1997 of cocaine possession. (Health & Saf. Code, § 11350, subd. (a).) He appeals from orders denying his Penal Code section 1170.18, subdivision (a) resentencing petition and his reconsideration motion.[1] The trial court found defendant posed an unreasonable risk of danger to public safety. The trial court issued an extensive memorandum of decision to that effect. The trial court denied reconsideration. The original petition was denied on August 12, 2015. The reconsideration motion was denied on August 26, 2015. We affirm the orders denying the resentencing petition and the reconsideration motion.

II. DISCUSSION

A. The Resentencing Petition

The parties agree defendant was eligible for resentencing. Pursuant to section 1170.18, subdivision (a), a trial court must resentence an eligible defendant unless she or he would pose an unreasonable risk of danger to public safety. Section 1170.18,

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[1] Further statutory references are to the Penal Code except where otherwise noted.

subdivision (b) identifies the factors to be considered in exercising that discretion: the defendant's criminal conviction history; the defendant's criminal conviction history including the type of crimes committed, the extent of the victim's injuries, the length of prior prison commitments and the remoteness of the criminal conduct; the defendant's disciplinary record and record of rehabilitation while incarcerated; and any relevant evidence that sheds light on whether a new sentence would result in an unreasonable risk of danger to public safety. (§ 1170.18, subd. (b).) The term "unreasonable risk of danger to public safety" is defined as an unreasonable risk the defendant will commit a new violent felony as listed in section 667, subdivision (e)(2)(C)(iv). (§ 1170.18, subd. (c).)

Our review is for an abuse of discretion. (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1264; cf. *People v. Losa* (2014) 232 Cal.App.4th 789, 791 [§ 1170.126]; *People v. Flores* (2014) 227 Cal.App.4th 1070, 1075 [same].) As our Supreme Court has repeatedly held, discretion is abused when it is exercised in an arbitrary, capricious or patently absurd manner. (E.g., *People v. Peoples* (2016) 62 Cal.4th 718, 745; *People v. Thomas* (2012) 53 Cal.4th 771, 806; *People v. Carmony* (2004) 33 Cal.4th 367, 376-377; *People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125; *People v. Jordan* (1986) 42 Cal.3d 308, 316.)

Defendant argues the trial court based its conclusion on a "generalized risk of recidivism" rather than on a risk he would commit an offense enumerated in section 667, subdivision (e)(2)(C)(iv). Defendant notes he has no prior conviction of an offense enumerated in section 667, subdivision (e)(2)(C)(iv). While true, that fact is not dispositive. Defendant has committed three robberies and a voluntary manslaughter and sustained numerous parole violations. One of the probation reports prepared in connection with one of his prior felony convictions relates: "Awaiting disposition of a voluntary manslaughter offense is this violent-prone, 23-year-old gang-oriented parolee who has been plodding through the criminal justice system for years [wreaking] havoc upon victims almost at will. He has been exposed to literally everything in the way of programs with obvious negative results." The trial court understood how an unreasonable risk of danger to public safety was defined and so found as reflected in its memorandum of decision. The trial court could reasonably conclude defendant presented an unreasonable risk of danger to public safety and was a risk to commit an offense enumerated in section 667, subdivision (e)(2)(C)(iv) based upon: his extensive criminal history; his continued association with the Mexican Mafia and a local gang; his disciplinary and rehabilitation records while incarcerated; his failure to engage in educational, vocational or substance abuse programming; and his

tenuous post-release plans. (*People v. Hall, supra,* 247 Cal.App.4th at pp. 1263-1266.)

Defendant also argues, "[T]he [trial] court's conclusion that [defendant's] continued gang allegiance established [the requisite] nexus between his criminal history and his current risk of danger to the public was undermined by the minor nature of the gang-related evidence on which the court relied." (*People v. Esparza* (2015) 242 Cal.App.4th 726, 745-746 [there must be a rational nexus between statutory factors and *current* dangerousness]; cf. *In re Lawrence* (2008) 44 Cal.4th 1181, 1210 ["'due consideration' of the specified (parole) factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness."]) The trial court found that in 1996, prison officials concluded defendant was an active member of the Mexican Mafia prison gang. In April 2002, he was deemed an inactive associate. But in March 2004 and November 2009, defendant was again found to be an associate of the Mexican Mafia. From February 2013 to February 2014, defendant was placed in a program which would allow him to demonstrate his commitment and willingness to refrain from gang involvement. But on March 16, 2015, three photocopied pictures containing handwritten gang symbols together with defendant's gang moniker were found in his cell. A prison investigator noted this

indicated defendant's continued recognition of and support and allegiance to the Mexican Mafia and a local gang. A chronological entry by a prison gang investigator concluded this document should be used for reevaluation of defendant as a gang member and a Mexican Mafia associate. Defendant asserts the trial court placed too much emphasis on this transgression. Defendant argues that prison officials never took any action against him as a result and he was *not* reevaluated as a gang member. We find no abuse of discretion. The trial court's reliance on the presence of gang material in defendant's cell was not arbitrary, capricious or patently absurd.

B. The Reconsideration Motion

Defendant further contends the trial court erred on September 1, 2015, in denying his reconsideration motion. The parties apparently assume without discussion that the Code of Civil Procedure section 1008 reconsideration provisions apply in criminal cases. The Court of Appeal has held that they do not. (*People v. Castello* (1998) 65 Cal.App.4th 1242, 1247; see *People v. DeLouize* (2004) 32 Cal.4th 1223, 1231, fn. 2; *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 728-729 & fn. 12.)

That motion relied on a "Classification Committee Chrono" issued one day after the resentencing petition hearing. The document reflects that defendant completed a step down program

with "no documented evidence of continued" security threat group involvement. Further, the document recommended defendant be transferred to a minimum security facility. The trial court concluded the reconsideration motion did not present facts warranting reevaluation of its August 12, 2015 decision. The trial court ruled the new Classification Committee Chrono merely contradicted overwhelming evidence in the record of defendant's continued gang allegiance. Our review is for an abuse of discretion. (*People v. Alexander* (2010) 49 Cal.4th 846, 871; *Yolo County Department of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 50.) As the Attorney General observes, under the abuse of discretion standard of review, "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; accord, *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1339.) Here, the trial court's September 1, 2015 conclusion was neither arbitrary, capricious or patently absurd.

III. DISPOSITION

The orders denying defendant's Penal Code section 1170.18, subdivision (a) resentencing petition and reconsideration motion are affirmed.

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TURNER, P.J.

We concur:

KRIEGLER, J.

BAKER, J.