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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.

PATRICK D. MEEKS,

Defendant and
Appellant.

B289806

(Los Angeles County
Super. Ct. No. BA455087)

APPEAL from a judgment of the Superior Court of Los Angeles County, Leslie A. Swain, Judge. Conditionally reversed and remanded.

Rudolph J. Alejo, 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, Senior

Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, Nicholas J. Webster, Deputy Attorney General, for Plaintiff and Respondent.

The jury found defendant and appellant Patrick D. Meeks guilty of second degree robbery (Pen. Code, § 211),¹ with personal use of a deadly or dangerous weapon (§ 12022, subd. (b)(1)). Meeks admitted two prior strikes under the three strikes law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)) and two enhancements for prior serious felony convictions (§ 667, subd. (a)(1)). The trial court granted Meeks’s unopposed motion to strike the prior strikes and sentenced him to a total term of 12 years in prison, consisting of the low term of 2 years for the robbery, plus two terms of 5 years each for the prior serious felony enhancements.

Meeks argues that his conviction must be conditionally reversed because he is entitled to an eligibility hearing under recently enacted section 1001.36, which gives trial courts discretion to grant pretrial diversion for mental health treatment to qualified defendants, and that he is entitled to remand for the trial court to determine whether to exercise its discretion to strike the two 5-year prior felony conviction enhancements under section 667, subdivision (a)(1). The Attorney General agrees that the matter should be remanded for the trial court to determine whether to

¹ All further statutory references are to the Penal Code unless otherwise indicated.

exercise its discretion to strike the prior felony conviction enhancements, but argues that conditional reversal is inappropriate because section 1001.36 does not apply retroactively.

We conditionally reverse Meeks's conviction and remand for the trial court to determine whether to exercise its discretion to (1) strike Meeks's prior serious felony convictions under section 667, subdivision (a)(1); and (2) to grant pretrial mental health diversion pursuant to section 1001.36, including whether to conduct a hearing to determine Meeks's eligibility.

FACTS AND PROCEDURAL HISTORY

Prior to trial, defense counsel declared a doubt as to Meeks's competency. A psychiatrist reported that Meeks was competent, despite suffering from paranoid schizophrenia and substance-abuse disorders. Following a hearing on January 29, 2018, Meeks's competency was deemed restored and proceedings continued.

At trial, the prosecution presented evidence that on March 1, 2017, Meeks entered a Home Depot during business hours wearing gloves, kneepads, and goggles, and carrying a flashlight. Moises Alvarez, the store's loss prevention officer, recognized Meeks as the person who stole a pair of gloves from the store the previous day. Alvarez observed Meeks taking items. Alvarez confronted him and said that he could leave if he left the merchandise on the

floor. Meeks, who was holding a knife, declined the offer and stated that he needed the things he was taking. When Meeks headed for the exit, Alvarez initially followed him, but was deterred when he noticed that Meeks was swinging the flashlight and muttering to himself. The police arrived shortly thereafter, arrested Meeks without incident, and recovered \$292.55 worth of merchandise from his person.

The defense called psychiatrist Dr. Jack Rothberg, who had examined Meeks two to three days after his arrest. He testified that Meeks suffered from unspecified psychosis, either schizophrenia or bipolar disorder or depression with psychosis, and reported auditory and visual hallucinations. Dr. Rothberg also stated that Meeks specifically requested medication for these symptoms while incarcerated.

In closing argument, defense counsel argued that Meeks was suffering from hallucinations at the time of the incident, and he should be convicted of the lesser offense of petty theft rather than robbery because he was acting in conformance with his mental illness, not using force or fear to accomplish the theft.

DISCUSSION

Pretrial Diversion for Mental Health Disorders

Meeks contends that his conviction must be conditionally reversed because he is entitled to a hearing under recently enacted section 1001.36, which allows

qualifying defendants to participate in pretrial diversion and receive mental health treatment in lieu of prosecution. (§ 1001.36, subd. (c).) Relying on *People v. Frahs* (2018) 27 Cal.App.5th 784 (*Frahs*), review granted Dec. 27, 2018, S252220,² Meeks argues that the Legislature intended for the statute, which provides ameliorating benefits to defendants, to apply retroactively in cases like his, in which the judgment was not final at the time the statute was enacted. The Attorney General counters that the language of subdivision (c) of section 1001.36 demonstrates that the Legislature intended the enactment to operate prospectively, i.e., the enactment would not apply to cases such as this one in which there has already been an adjudication.

Our Supreme Court has granted review to decide whether section 1001.36 applies retroactively. (*Frahs*, *supra*, 27 Cal.App.5th 784 [holding that section 1001.36 applies retroactively].) Because our Supreme Court will soon have the final word, we will keep our discussion brief.

We agree with the outcome in *Frahs*, which held that section 1001.36 applies retroactively to defendants whose cases are not yet final. Meeks’s case is not yet final, and the record affirmatively discloses that he meets at least one of

² See California Rules of Court, rule 8.1115(e)(1) [“[p]ending review and filing of the Supreme Court’s opinion, unless otherwise ordered by the Supreme Court . . . , a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only”].

section 1001.36’s threshold eligibility requirements—Meeks “suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, . . .” (§ 1001.36, subd. (b)(1)(A)). Moreover, the record indicates that Meeks may meet other requirements under section 1001.36—the facts suggest Meeks’s mental disorder may have been “a significant factor in the commission of the charged offense,” (§ 1001.36, subd. (b)(1)(B)), and that Meeks may be amenable to treatment for his mental illness (§ 1001.36, subd. (b)(1)(E)). We therefore remand to allow the trial court to determine whether Meeks should benefit from diversion under section 1001.36. (*Frahs, supra*, 27 Cal.App.5th at p. 791.)

Prior Serious Felony Enhancement

Senate Bill No. 1393, signed into law on September 30, 2018, amends sections 667 and 1385 to provide the trial court with discretion to strike five-year enhancements pursuant to section 667, subdivision (a)(1), in the interests of justice. (Sen. Bill No. 1393 (2017–2018 Reg. Sess.) §§ 1, 2.) The new law took effect on January 1, 2019. We agree with the parties that the law applies to Meeks, whose appeal was not final on the law’s effective date. Accordingly, we remand the matter for the trial court to consider whether to exercise its discretion to strike the section 667, subdivision (a)(1) enhancements.

DISPOSITION

The judgment is conditionally reversed and the matter is remanded to the trial court with directions to, within 90 days from the remittitur: (1) consider whether to exercise its discretion to strike the two section 667, subdivision (a)(1) enhancements (in the event the conviction is reinstated); and (2) consider whether to exercise its discretion to grant pretrial diversion, including whether to conduct a diversion eligibility hearing, under section 1001.36. If the court grants Meeks pretrial mental health diversion, and Meeks successfully completes a diversion program, the court shall dismiss the charges in accordance with section 1001.36, subdivision (e). If either of these conditions is not met, the trial court shall reinstate the judgment.

MOOR, J.

WE CONCUR:

RUBIN, P. J.

KIM, J.