

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS VARGAS,

Defendant and Appellant.

B279127

(Los Angeles County
Super. Ct. No. TA137729)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Conditionally reversed, and remanded with directions.

Jeffrey J. Gale, 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, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jesus Vargas appeals from the judgment entered following his plea of no contest to first degree murder (Pen. Code, § 187, subd. (a))¹ with an admission he committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). Because Vargas is entitled to a “fitness hearing” under Proposition 57, we conditionally reverse the judgment, and remand with directions.

FACTUAL SUMMARY²

On July 11, 2015, victim Andres N. and two others were walking on the sidewalk when 17-year-old Vargas approached on a bicycle. Without provocation, Vargas shot Andres multiple times. Vargas was a member of the 18th Street gang. Andres belonged to a rival gang. Following his arrest, Vargas told police that he was riding his bicycle when Andres approached and tried to rob him. Vargas admitted that he shot Andres. A prosecution gang expert opined the present offense was committed for the benefit of the 18th Street criminal street gang.

ISSUES

Vargas asserts Proposition 57 requires that we remand his case to juvenile court for a “fitness hearing.” In a supplemental brief, he claims he was not afforded a sufficient opportunity at the sentencing hearing to make a record relevant to his eventual youth offender parole hearing under section 3051.

¹ Unless otherwise indicated, subsequent section references are to the Penal Code.

² The factual background is from the preliminary hearing.

DISCUSSION

1. REMAND IS APPROPRIATE SO THE JUVENILE COURT CAN CONDUCT A TRANSFER HEARING.

The information filed in February 2016 alleged first degree murder and that, pursuant to Welfare and Institutions Code section 707, subdivision (d)(1), Vargas was at least 16 years old when he committed the offense. In March 2016, he pled not guilty and denied all special allegations.

On November 9, 2016, Proposition 57 became effective. Vargas therefore filed a motion asking the trial court to transfer his case to juvenile court in light of Proposition 57. The court denied Vargas's motion on the ground that Proposition 57 was not retroactive. Vargas then entered his previously discussed no contest plea, agreeing that the court would sentence him to prison for 25 years to life, stay punishment on the gang enhancement, and dismiss all remaining allegations. Vargas waived his appellate rights on all issues except for the Proposition 57 issue.

Vargas contends Proposition 57 requires that we remand his case to juvenile court for a "fitness hearing." For the reasons discussed below, we agree remand to the juvenile court is appropriate so it can conduct a hearing to determine whether Vargas's case should be transferred to the adult criminal court.

People v. Superior Court (Lara) (2018) 4 Cal.5th 299, 303-304 (*Lara*), addressed retroactivity of the commencement of action (filing) and transfer hearing requirements of Proposition 57. In *Lara*, the defendant allegedly committed sex offenses when he was 14 and 15 years old. The prosecution filed charges against him directly in the adult court as then permitted by law. (*Id.* at p. 303.) Proposition 57 then became effective, so the

defendant moved to transfer the matter to juvenile court for a “fitness hearing.” The adult court granted the motion, concluding Proposition 57 was retroactive. The adult court suspended proceedings and the People filed a petition in juvenile court. Later, the People asked the juvenile court to transfer the case back to adult court. The juvenile court denied the People’s request. (*Id.* at pp. 303–305.)

Lara noted, “Proposition 57 prohibits prosecutors from charging juveniles with crimes directly in adult court. Instead, they must commence the action in juvenile court. If the prosecution wishes to try the juvenile as an adult, the juvenile court must conduct what we will call a ‘transfer hearing’ to determine whether the matter should remain in juvenile court or be transferred to adult court. Only if the juvenile court transfers the matter to adult court can the juvenile be tried and sentenced as an adult.” (*Lara, supra*, 4 Cal.5th at p. 303.)

Lara further noted the rule articulated in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), that a statute that reduces the punishment for a crime applies retroactively to any case in which the judgment was not final before the statute took effect. (*Lara, supra*, 4 Cal.5th at p. 303.) *Lara* found that *Estrada* was “not directly on point,” “[b]ut [*Estrada*’s] rationale does apply.” (*Ibid.*) *Lara* then concluded, “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. Therefore, Proposition 57 reduces the possible punishment for a class of persons, namely juveniles. For this reason, *Estrada*’s inference of retroactivity applies. As nothing in Proposition 57’s text or ballot materials rebuts this inference, we conclude this part of

Proposition 57 applies to all juveniles charged directly in adult court whose judgment was not final at the time it was enacted.” (*Lara*, at pp. 303–304.)

Lara discussed *People v. Vela* (2017) 21 Cal.App.5th 1099, (*Vela*)).³ (*Lara, supra*, 4 Cal.5th at p. 308.) In *Vela*, the defendant was charged, tried, and convicted in adult court for crimes he committed as a minor. (*Lara*, at p. 308; *Vela*, at pp. 1102–1103.) The defendant’s case was pending on appeal when Proposition 57 was enacted. *Vela* concluded *Estrada*’s rationale applied and the defendant in *Vela* was entitled to a transfer hearing. (*Lara*, at p. 308.)

Vela said, “Here, for a minor accused of a crime, it is a potential ‘ameliorating benefit’ to have a neutral judge, rather than a district attorney, determine that he or she is unfit for rehabilitation within the juvenile justice system. While a district attorney has an obligation to be objective and impartial, the duty of that position is also to act as a zealous advocate. [Citation.] And the impact of the decision to prosecute a minor in criminal court rather than juvenile court can spell the difference between a 16-year-old minor such as Vela being sentenced to prison for 72 years to life, or a discharge from the [Division of Juvenile Justice’s] custody at a maximum of 23 years of age. After the passage of Proposition 57, a juvenile court judge can only make that irrevocable decision after receiving a probation report and after conducting a full hearing considering the minor’s prior history, the circumstances of the offense, and several other factors relating to his or her youth and immaturity.” (*Vela, supra*, 21 Cal.App.5th at pp. 1108–1109.)

³ We cite and quote from the republished *Vela* decision.

Vela concluded, “Here, the electorate has taken away from prosecutors the discretion to directly file cases against minors in criminal courts. As a result—similar to the discretion of a judge to reduce a crime from a felony to a misdemeanor *in some cases*—a juvenile court judge can now exercise his or her discretion *in some cases* and determine that a minor should remain in the juvenile justice system rather than face prosecution and sentencing in the criminal courts. For those minors who remain in the juvenile court, with its primary emphasis on rehabilitation rather than punishment, the potential effect of that ‘ameliorating benefit’ is analogous to the potential reduction in a criminal defendant’s sentence as in *Estrada* and [*People v. Francis* (1969) 71 Cal.2d 66].” (*Vela, supra*, 21 Cal.App.5th at p. 1111.)

Here, Proposition 57 became effective after charges against Vargas were filed in adult court, but before he pled no contest. Accordingly, the judgment in this case was not yet final when Proposition 57 became effective. We hold the filing and transfer hearing requirements of Proposition 57 apply retroactively in this case, the trial court erred by denying Vargas’s motion, and the matter must be transferred to juvenile court for further proceedings. (*Lara, supra*, 4 Cal.5th at pp. 303–304, 307–309.) “When conducting the transfer hearing, the juvenile court shall, to the extent possible, treat the matter as though the prosecutor had originally filed a juvenile petition in juvenile court and had then moved to transfer [the defendant’s] cause to a court of criminal jurisdiction.” (*Vela, supra*, 21 Cal.App.5th at p. 1113.)

None of the cases cited by respondent, or his argument, compels a contrary conclusion. Respondent acknowledges that there was conflicting appellate authority, including cases cited by respondent, on the instant Proposition 57 retroactivity issue, and that the issue was pending before our Supreme Court. The briefing in the present case occurred before *Lara* was decided. *Lara* controls the present case.

2. REMAND IS APPROPRIATE SO VARGAS CAN MAKE A RECORD RELEVANT TO HIS EVENTUAL YOUTH OFFENDER PAROLE HEARING.

A preconviction probation report prepared for a September 4, 2015 hearing discussed Vargas’s record as a juvenile, personal history, and the aggravating and mitigating factors in the present case, and the report recommended imprisonment. On November 15, 2016, Vargas pled no contest and the court sentenced him to prison for 25 years to life for first degree murder, staying the gang allegation. On the People’s motion, the court dismissed the remaining allegations.

Vargas claims he was not afforded a sufficient opportunity at the sentencing hearing to make a record relevant to his eventual youth offender parole hearing under section 3051. Respondent concedes.⁴ We accept the concession.

Under section 3051, because Vargas was 16 when he committed the murder, he will be entitled to a youth offender parole hearing in the 25th year of his incarceration. Our California Supreme Court has therefore held that youth offenders, at the time of sentencing, must be given a “sufficient

⁴ Because respondent concedes, we need not address Vargas’s other arguments.

opportunity to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a youth offender parole hearing.” (*People v. Franklin* (2016) 63 Cal.4th 261, 284 (*Franklin*).)

Since Vargas was under 25 years old when he murdered Andres, we will remand, in addition to our previously discussed limited Proposition 57 remand, for the limited purpose of giving the parties the opportunity to make a record of Vargas’s characteristics and circumstances at the time of his offense, for use in his future youth offender parole hearing, “so that the Board, years later, may properly discharge its obligation to ‘give great weight to’ youth-related factors (§ 4801, subd. (c)) in determining whether the offender is ‘fit to rejoin society’ despite having committed a serious crime ‘while he was a child in the eyes of the law.’ ” (*Franklin, supra*, 63 Cal.4th at p. 284.)

DISPOSITION

The judgment is conditionally reversed and the matter is remanded to juvenile court with the following directions. No later than 90 days from the filing of the remittitur, the juvenile court is directed to conduct a transfer hearing, as discussed in this opinion, and determine whether the matter should have been transferred to adult court. If, at the transfer hearing, the juvenile court determines it would have transferred Vargas’s matter to the adult court, then the judgment of the adult court shall be reinstated as of the date of that determination and the adult court shall then conduct a limited *Franklin* hearing within 30 days.

If, at the transfer hearing, the juvenile court determines it would not have transferred Vargas's matter to the adult court, then, as of the date of that determination, Vargas's criminal conviction and admissions shall be deemed a no contest plea by a juvenile to first degree murder committed for the benefit of, at the direction of, or in association with a criminal street gang, and the juvenile court shall then conduct a dispositional hearing within its usual time frame.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DHANIDINA, J.*

We concur:

EDMON, P. J.

EGERTON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.