Filed 5/24/17 P. v. Taylor CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. BRENT ALLEN TAYLOR, Defendant and Appellant.	B268854 (Los Angeles County Super. Ct. No. LA049790)

APPEAL from an order of the Superior Court of Los Angeles County, treated as an original petition for writ of habeas corpus, Susan M. Speer, Judge. Petition denied.

John L. Staley, 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, Assistant Attorney General, Mary Sanchez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Brent Allen Taylor appeals from an order denying his motion for resentencing in which he requested that the trial court strike two one-year sentence enhancements (Pen. Code,[1] § 667.5, subd. (b)) in a 2006 conviction that were based on prior felony convictions for which he served separate prison terms. Taylor claims that the enhancements should be stricken because the felony offenses on which they rested were reduced to misdemeanors in 2015 pursuant to Proposition 47, the Safe Neighborhoods and Schools Act of 2014 (§ 1170.18). We disagree. The reduction of a felony offense to misdemeanor under Proposition 47 does not apply retroactively to invalidate sentence enhancements that became final before Proposition 47's enactment. We treat Taylor's appeal as an original petition for writ of habeas corpus and deny relief.

FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2006, a jury convicted Taylor of driving a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)). The trial court sentenced Taylor to the middle term of three years, doubled to six years as a second strike under the three strikes law (§§ 667, subds. (b)-(i), 1170.12). The court also imposed four one-year sentence enhancements for prior felony convictions for which Taylor served separate prison terms. (§ 667.5, subd. (b) (section 667.5(b)). Those prior convictions were as follows: a 2002 conviction for possession of a controlled substance (Health & Saf. Code, § 11377); a 1996 conviction for

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[1] Unless otherwise noted, all further statutory references are to the Penal Code.

driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)); a 1998 conviction for burglary (§ 459); and a 1994 conviction for petty theft with a prior (§ 666). Taylor's total sentence thus was 10 years.

In November 2014, the voters of California enacted Proposition 47, which reclassified as misdemeanors certain drug and theft offenses that previously had been classified "as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Thereafter, Taylor petitioned under Proposition 47 for the reduction of his 2006 felony convictions for possession of a controlled substance and petty theft with a prior to misdemeanors. On July 7, 2015, the trial court granted that petition. Later that month, Taylor filed a motion for resentencing in which he asked the court to strike the sentence enhancements that were based on the convictions for possession of a controlled substance and petty theft with a prior that the court had reduced to misdemeanors. At the hearing on Taylor's resentencing motion, the trial court noted that Taylor was asking it to apply Proposition 47 retroactively to strike enhancements that were imposed before Proposition 47's enactment. The court declined to do that. It stated, "I think had [Taylor] not already been sentenced, he probably would be entitled to relief and have those state prison priors not considered for purposes of sentencing. But being that he has already been sentenced . . . the fact that the underlying offense resulting in a prior prison term is now a misdemeanor pursuant to Prop[osition] 47 does not change, in my mind, the validity of the enhancement . . . ." Accordingly, the court denied the motion.

Taylor filed a notice of appeal from the order denying the motion.

DISCUSSION

This case involves the interplay between two Penal Code provisions: the prior felony conviction prison term sentence enhancement provision, section 667.5(b), and Proposition 47's provision, section 1170.18, for resentencing based on the reclassification of certain felony offenses to misdemeanors by Proposition 47.

As a threshold matter, the People argue that section 1170.18 does not authorize motions for resentencing that seek to strike section 667.5(b) sentence enhancements resting on felony convictions that were reduced to misdemeanors under Proposition 47. Therefore, according to the People, the trial court lacked jurisdiction to entertain Taylor's resentencing motion in the first place, and the order denying the motion was not appealable. We conclude that, although the trial court had jurisdiction to hear the motion, we do not have jurisdiction to hear the appeal because the motion was nonstatutory (Taylor did not file it under section 1170.18, or any statute for that matter) and orders denying nonstatutory motions are nonappealable. (*People v. Totari* (2002) 28 Cal.4th 876, 886.)

Taylor correctly notes, however, that he is claiming that the sentence enhancements at issue here became unlawful immediately following the reduction from felonies to misdemeanors of the convictions on which they rested, and that an unlawful sentence can be corrected at any time. When he filed the notice of appeal from the order denying his resentencing

motion, Taylor was in custody on the judgment of conviction of which the enhancements were a part. Thus, the lawfulness of the enhancements could have been challenged through a petition for a writ of habeas corpus. (*People v. Villa* (2009) 45 Cal.4th 1063, 1069.) Under these circumstances, we will treat Taylor's purported appeal as an original petition for a writ of habeas corpus and consider the merits of his challenge to the sentence enhancements. (*People v. Segura* (2008) 44 Cal.4th 921, 928, fn. 4.)

A. *Overview of Sections 667.5(b) and 1170.18*

"[S]ection 667.5(b) . . . provides a special sentence enhancement for [a] particular *subset* of 'prior felony convictions' that were deemed serious enough by earlier sentencing courts to warrant actual imprisonment . . . ." (*People v. Jones* (1993) 5 Cal.4th 1142, 1148.) Imposition of the enhancement "requires proof that the defendant '"(1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction."' [Citation.]" (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 742 (*Abdallah*).

Section 1170.18, subdivision (a) (section 1170.18(a)) provides a mechanism by which a person who on the date of Proposition 47's enactment was serving a felony sentence for an offense that Proposition 47 reduced to a misdemeanor may petition to recall that sentence and seek resentencing. To be eligible for resentencing under section 1170.18(a), the petitioner must demonstrate that the sentence that he or she is serving is '"'"for a crime that would have been a misdemeanor had

Proposition 47 been in effect at the time the crime was committed.'"" (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449.) Subdivision (b) of section 1170.18 provides, in turn, that a petitioner who is eligible for resentencing "'shall have his or her sentence recalled and be "resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." [Citation.]' [Citation.]" (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1261.) Section 1170.18, subdivisions (f) and (g), provide similar relief for persons who have completed felony sentences for offenses that Proposition 47 reclassified as misdemeanors; these provisions authorize such persons to file an application to have their convictions designated as misdemeanors. (§ 1170.18, subds. (f), (g).)

Section 1170.18 contains two other provisions that are pertinent here. The first of those, section 1170.18, subdivision (k) (section 1170.18(k)), provides that "[a]ny felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction [for various firearm prohibitions]." The second provision, section 1170.18, subdivision (n), provides that, "[n]othing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act."

B. *Section 1170.18 Does Not Apply Retroactively To Invalidate Section 667.5(b) Enhancements Imposed in a Judgment of Conviction That Became Final Prior to Proposition 47's Enactment*

Taylor argues that, under the "plain wording" of section 667.5(b) and section 1170.18(k), a prior prison term enhancement "cannot be based on a conviction that has been reduced to a misdemeanor . . . ." To support this argument, Taylor correctly points out that section 667.5(b) provides that "[a] prior prison term enhancement can only be imposed for a felony," and that section 1170.18(k) provides that a felony conviction reduced to a misdemeanor is "considered a misdemeanor for all purposes." From there, Taylor asserts that once a felony conviction has been reduced to a misdemeanor, it no longer can sustain sentence enhancements based on the felony conviction, regardless of when the enhancements were imposed. Thus, he claims that the trial court's reduction to misdemeanors of his felony convictions for possession of a controlled substance and petty theft with a prior retroactively invalidated the enhancements based on those convictions that were part of the 2006 judgment of conviction he suffered for unlawful driving of a vehicle. We do not read the statutes the way that Taylor does.[2]

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[2] The California Supreme Court has granted review in several cases in which appellate courts have declined to apply Proposition 47 retroactively to invalidate pre-Proposition 47 sentence enhancements imposed under section 667.5(b). (See *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted Mar. 30, 2016, S232900 [lead case]; see also *People v. Jones* (2016) 1 Cal.App.5th 221, review granted Sept. 14, 2016, S235901; *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016, S233539; *People v. Carrea* (2016) 244

Our construction of Proposition 47 starts, as it must, with the fundamental tenet that "'[i]n interpreting a voter initiative . . . , we apply the same principles that govern" our construction of a statute. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900.) And under those principles, "[w]hether a statute operates prospectively or retroactively is, at least in the first instance, a matter of legislative intent. When the Legislature has not made its intent on the matter clear with respect to a particular statute, the Legislature's generally applicable declaration in section 3 provides the default rule: 'No part of [the Penal Code] is retroactive, unless expressly so declared.' . . . [S]ection 3 . . . codif[ies] 'the time-honored principle . . . that in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature . . . must have intended a retroactive application.' [Citations.]" (*People v. Brown* (2012) 54 Cal.4th 314, 319.) This default rule applies equally to a statute enacted through a ballot initiative. (See *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209 ["in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application"].) Furthermore, the default rule counsels us "not to infer retroactive intent from vague phrases and broad, general language in statutes. [Citations.] Consequently, "'a statute that is ambiguous with respect to retroactive application

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Cal.App.4th 966, review granted Apr. 27, 2016, S233011; *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201.) To date, no published appellate decision has ruled to the contrary.

is construed . . . to be unambiguously prospective.'" [Citation.]" (*Brown*, *supra*, at pp. 319-320.)

Proposition 47 does not contain any language expressly stating that its provisions are retroactive. Thus, the default rule against retroactivity generally applies to Proposition 47. We say the default rule generally applies here because Proposition 47 does contain two mechanisms for resentencing on felony convictions that became final before Proposition 47's enactment. First, a defendant who was serving a sentence for a felony on the date of Proposition 47's enactment that would now be a misdemeanor may petition for recall of the felony conviction and resentencing as a misdemeanor. (§ 1170.18, subds. (a), (b).) Second, a defendant "who has completed his or her sentence" for a felony that would now be a misdemeanor may apply for redesignation of that conviction as a misdemeanor. (§ 1170.18, subds. (f), (g).)

These provisions refer only to the reduction of convictions, not enhancements based on those convictions. There is no separate Proposition 47 mechanism through which courts can retroactively strike a sentence enhancement that became final before Proposition 47's enactment, even when the conviction on which the enhancement rests was reduced to a misdemeanor under Proposition 47. Reading a third mechanism into Proposition 47 to allow retroactive challenges to sentence enhancements that became final before Proposition 47's enactment would contravene section 1170.18, subdivision (n), which states that, "[n]othing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act." Because sentence enhancements do not fall within the purview of Proposition 47's

resentencing mechanisms, we must heed the directive in section 1170.18, subdivision (n), and avoid a construction of Proposition 47 that would diminish or abrogate the finality of an enhancement in a judgment of conviction.

Taylor falls back on section 1170.18(k)'s "for all purposes" language. He contends that "all" means "all" and therefore the phrase necessarily encompasses sentence enhancements imposed prior to Proposition 47's enactment.

Taylor reads too much into the "for all purposes" language in section 1170.18(k). In *Abdallah*, we observed that the phrase was "borrowed" from identical language in section 17, subdivision (b) (section 17(b)). (*Abdallah*, *supra*, 246 Cal.App.4th at p. 745.) Section 17(b) states that when an offense that is a wobbler is declared a misdemeanor, "it is a misdemeanor for all purposes." (§ 17(b).) The California Supreme Court has construed the phrase "for all purposes" as used in section 17(b) to operate prospectively only. Thus, once a wobbler offense has been declared a misdemeanor, "the offense is a misdemeanor from that point on, but not retroactively." (*People v. Feyrer* (2010) 48 Cal.4th 426, 439; see also *People v. Park* (2013) 56 Cal.4th 782, 794 ["reduction of a wobbler to a misdemeanor under . . . section 17(b) generally precludes its use as a prior felony conviction in a subsequent prosecution"]; *People v. Moomey* (2011) 194 Cal.App.4th 850, 857 [misdemeanor status of a wobbler offense is "not . . . given retroactive effect"].)

In light of its identical language ("for all purposes") and its analogous subject matter (addressing the effect of designating a felony as a misdemeanor), section 1170.18(k) should be interpreted in the same manner as section 17(b). (*Abdallah*, *supra*, 246 Cal.App.4th at p. 746; *People v. Rivera*, *supra*, 233

Cal.App.4th at p. 1100; see also *People v. Cornett* (2012) 53 Cal.4th 1261, 1269, fn. 6 ["identical language appearing in separate statutory provisions should receive the same interpretation when the statutes cover the same or analogous subject matter"].) Thus, consistent with the Supreme Court's interpretation of section 17(b), we "presume . . . the phrase 'shall be considered a misdemeanor for all purposes' in section 1170.18[(k)] does not apply retroactively." (*Rivera*, *supra*, at p. 1100.) And therefore, the phrase does not support the invalidation of sentence enhancements in Taylor's 2006 judgment of conviction that became final long before Proposition 47's enactment.[3]

Taylor's reliance on *People v. Park*, *supra*, 56 Cal.4th 782 and *People v. Flores* (1979) 92 Cal.App.3d 461 in support of his construction of section 1170.18(k) is misplaced. *Park* held that the defendant's current felony sentence could not be enhanced for a prior conviction that had been previously reduced to a misdemeanor under section 17(b). The court explained that once a wobbler has been "reduc[ed] . . . to a misdemeanor . . . section 17(b) generally precludes its use as a prior felony conviction in a subsequent prosecution." (*Park*, *supra*, at pp. 794, 804.) In

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[3] In *Abdallah*, we construed section 1170.18(k)'s "all purposes" language to bar the imposition of a one-year sentence enhancement under section 667.5(b). *Abdallah* does not govern here because it involved a prospective application of Proposition 47 to invalidate a sentence enhancement imposed *after* the conviction on which it rested had been reduced under Proposition 47. It was on that basis that we distinguished in *Abdallah* cases holding that Proposition 47 does not retroactively invalidate a sentence enhancement imposed *before* Proposition 47's enactment. (*Abdallah*, *supra*, 246 Cal.App.4th at pp. 746-747.)

Flores, the court held that the defendant's current felony sentence for selling heroin could not be enhanced based on a prior felony conviction for marijuana possession because the Legislature had reduced the marijuana offense to a misdemeanor before the defendant's heroin conviction. (*Flores*, *supra*, at p. 471.) By contrast, here the sentence enhancement that Taylor seeks to strike was imposed in a judgment of conviction that became final nearly a decade before the felony conviction on which the enhancement rested was redesignated as a misdemeanor.

Equally unavailing is Taylor's reliance on the firearms exception in section 1170.18(k), which provides that, notwithstanding the "for all purposes" language, a person whose felony sentence conviction was reduced to a misdemeanor under Proposition 47 still will be treated as a felon for purposes of statutory restrictions on a felon's ownership or possession of firearms. According to Taylor, if Proposition 47 was not intended to apply retroactively to sentence enhancements in judgments of conviction that became final before Proposition 47's enactment, then that limitation would have been recited alongside the firearms exception; its absence from section 1170.18(k), he says, implies that no exception was intended other than the firearms exception. Taylor overlooks, however, that section 17(b) carves out several explicit exceptions to its language that the redesignation of wobblers as misdemeanors is to be "for all purposes." The presence of these exceptions and the absence of one for retroactive application has not dissuaded courts from concluding that section 17(b)'s redesignation of wobblers as misdemeanors has prospective effect only.

Finally, Taylor argues that if Proposition 47 does not apply retroactively to the sentence enhancements at issue here, then the measure violates the equal protection clause of the United States Constitution because it "treats similarly situated individuals differently": specifically, a person whose sentence enhancement rests on a conviction that was reduced to a misdemeanor after Proposition 47's enactment will no longer be subject to the enhancement, whereas a person whose sentence enhancement rests on a conviction that was reduced to a misdemeanor before Proposition 47's enactment still will be subject to the enhancement. This argument is a nonstarter. The equal protection clause "does not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time." (*Sperry & Hutchinson Co. v. Rhodes* (1911) 220 U.S. 502, 505 [31 S.Ct. 490, 55 L.Ed. 561]; accord, *Califano v. Webster* (1977) 430 U.S. 313, 321 [97 S.Ct. 1192, 51 L.Ed.2d 360]; *People v. Floyd* (2003) 31 Cal.4th 179, 188 [there is no "equal protection violation arising from the timing of the effective date of a statute lessening the punishment for a particular offense"].)

DISPOSITION

The petition for writ of habeas corpus is denied.

SMALL, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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