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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSE MANUEL ROCHA, Defendant and Appellant.	B263350 (Los Angeles County Super. Ct. No. LA028064)

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

Law Offices of Charles Carbone, Charles F. A. Carbone and Rebecca N. Rabkin for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Jose Manuel Rocha appeals from an order denying his petition for recall of his indeterminate life sentence and resentencing in accordance with the Three Strikes Reform Act, commonly referred to as Proposition 36. The trial court found Rocha was eligible for resentencing, but denied his petition based on a discretionary determination that Rocha posed an "unreasonable risk of danger to public safety." (Pen. Code, § 1170.126, subd. (f).)[1] Proposition 36 does not specifically define the meaning of the quoted phrase.

Prior to the trial court ruling on Rocha's petition, the electorate approved the Safe Neighborhoods and Schools Act, commonly referred to as Proposition 47. Proposition 47 specifically defines the phrase "unreasonable risk of danger to public safety" to mean an unreasonable risk that the petitioner will commit a new violent felony within the meaning of certain enumerated Penal Code provisions. (§ 1170.18, subd. (c).) On appeal, Rocha contends Proposition 47's specific definition applies to petitions filed under Proposition 36, and that the trial court erred in failing to exercise its discretion in accordance with this standard. We disagree, and conclude Propositions 47's definition applies only to petitions filed under Proposition 47. We also conclude the trial court reasonably exercised its discretion in accordance with the standard applicable to Proposition 36. We affirm.

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[1] All future undesignated statutory references are to the Penal Code.

FACTS AND PROCEDUREAL BACKGROUND

On January 8, 1998, a jury convicted Rocha of selling, transporting or offering to sell a controlled substance and possessing a controlled substance for sale. He admitted suffering two prior convictions for first degree burglary, both serious felonies under the Three Strikes Law. On February 4, 1998, the court sentenced Rocha to 25 years to life in state prison.

On April 26, 2013, Rocha filed a petition for recall and resentencing pursuant to Proposition 36, the Three Strikes Reform Act. On July 26, 2013, the trial court found Rocha made a prima facie showing of eligibility and issued an order to show cause why the petition should not be granted. The People opposed the petition, alleging Rocha was unsuitable for resentencing because his release would pose an unreasonable risk of danger to public safety. The People based their opposition on Rocha's criminal history and disciplinary record while incarcerated.

On January 12, 2015, and February 5, 2015, the court held a suitability hearing on Rocha's petition for resentencing. Rocha maintained his criminal history was remote and consisted solely of nonviolent property crimes driven by his drug addiction. The trial court agreed Rocha's prior offenses were largely nonviolent and that his convictions were remote, noting the commitment offense was more than 14 years old and the other convictions were more than 26 years old. Nevertheless, the court found Rocha's criminal history showed a "tendency to revert back to crime when in the community," observing his "felony convictions carried a substantial prison term, meaning that he spent much of the time that separated his convictions in prison rather than in the community."

The evidence also showed Rocha received five serious rules violations reports during his 18 years of incarceration. These included possession of artwork containing a gang-related symbol in 2014; possession of gang-related contraband, specifically a letter or "kite" discussing Mexican Mafia activities in 2013; possession of inmate-manufactured alcohol in 2004; possession of heroin for sale in 2003; and participation in a riot in 2001. Rocha also was validated as an associate of the Mexican Mafia in 2008, based on an address book and letters evidencing the association, and he was revalidated in 2014, based on his possession of artwork containing a gang-related symbol and the kite. At the hearing, the People and Rocha presented opposing opinions from their respective gang-validation experts as to whether Rocha posed an unreasonable risk to public safety.

While in custody, Rocha earned a General Educational Development certificate and an associate's degree in business management; he trained in landscape gardening and welding vocational programs; and he participated in self-help programs, including Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). If released, Rocha testified he would reside either with his daughter or in transitional housing. He also said he would continue to participate in AA and NA. With respect to job opportunities, Rocha referred to a lifelong friend who had offered to train him at her mortgage company. He also suggested he could reinstate the x-ray technician license he held before he was incarcerated.

The trial court denied the petition, concluding Rocha would pose an unreasonable risk of danger to the public if resentenced. With respect to the applicable legal standard, the court observed that Proposition 36 (section 1170.126) does not define

"unreasonable risk of danger to public safety," and, though Proposition 47 (section 1170.18, subdivision (c)) specifically defined the phrase, the court held that definition was not applicable to a Proposition 36 petition. Citing Rocha's criminal history, institutional misconduct, limited rehabilitative programming, gang validation, and undeveloped post-release plans, the court found Rocha posed an unreasonable risk of danger to public safety.

DISCUSSION

1. *Statutory Interpretation Principles*

Rocha contends the trial court abused its discretion by failing to assess his Proposition 36 recall petition applying the specific definition of "unreasonable risk of danger to public safety" set forth in Proposition 47. The contention requires this court to interpret Penal Code provisions enacted by voter initiatives which are subject to the same rules of construction that govern statutory interpretation. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) Thus, " '[w]e turn first to the words of the statute themselves, recognizing that "they generally provide the most reliable indicator of legislative intent." ' " (*People v. Leal* (2004) 33 Cal.4th 999, 1007.) "When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' " (*Rizo*, at p. 685.)

2. *Proposition 36*

Prior to its amendment by Proposition 36, the Three Strikes law required that a defendant who had two or more prior convictions of violent or serious felonies receive a third strike sentence of a minimum of 25 years to life for any current felony conviction, even if the "third strike" was neither serious nor

violent. (Former §§ 667, subds. (d), (e)(2)(A), 1170.12, subds. (b), (c)(2)(A).) Proposition 36 amended the Three Strikes law with respect to defendants whose "third strike" felony is neither serious nor violent. In that circumstance, unless an exception applies, the defendant is to receive a second strike sentence of twice the term otherwise provided for the current felony. (*People v. Johnson* (2015) 61 Cal.4th 674, 680, 681.)

Proposition 36 also created a post-conviction release proceeding whereby a qualified prisoner, serving a three strikes sentence for a felony that is neither serious nor violent may have his or her sentence recalled and be sentenced as a second strike offender unless the court determines that resentencing would pose an unreasonable risk of danger to public safety. (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 168.)

Proposition 36 does not define the phrase "unreasonable risk of danger to public safety." It does, however, enumerate a list of factors "the court may consider" in making this determination: "(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (§ 1170.126, subd. (g).)

Proposition 36 became effective on November 7, 2012. (See *People v. Brown* (2014) 230 Cal.App.4th 1502, 1507.) Under section 1170.126, a petition for resentencing must be filed within

two years of Proposition 36's enactment "or at a later date upon a showing of good cause . . . ." (§ 1170.126, subd. (b).)

3. *Proposition 47*

California voters enacted Proposition 47 on November 4, 2014. It went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) Proposition 47 reduced certain selected felonies to misdemeanors. Like Proposition 36, it created a new resentencing provision whereby a person convicted of and serving a sentence for a felony or felonies which were now misdemeanors under Proposition 47 may petition for a recall of sentence and request resentencing. (§ 1170.18, subd. (a).) "If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner 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." (§ 1170.18, subd. (b).)

Like Proposition 36, Proposition 47 enumerates the same list of factors that the court may consider in making its discretionary risk of danger determination—i.e., "(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes. [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (Cf. §§ 1170.18, subd. (b), 1170.126, subd. (g).)

In contrast to Proposition 36, Proposition 47 defines the phrase "unreasonable risk of danger to public safety." Specifically, section 1170.18, subdivision (c) states, "As used throughout this Code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667." (§ 1170.18, subd. (c).) The enumerated offenses are commonly referred to as "super strikes."

4. *Proposition 47's Definition of an "Unreasonable Risk of Danger to Public Safety" Does Not Apply to Proposition 36*

Rocha contends Proposition 47's specific definition of "unreasonable risk of danger to public safety" controls the meaning of that phrase as used in Proposition 36.[2] He argues this conclusion is compelled by the words of the statute, which state, "[a]s used throughout this Code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony." (§ 1170.18, subd. (c).) Rocha maintains that by using the phrase "[a]s used throughout this Code," Proposition 47 imports its definition of "unreasonable risk of danger to public safety" into the entire

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[2] This issue is currently pending before the Supreme Court. (*People v. Valencia* (2014) 232 Cal.App.4th 514, review granted Feb. 18, 2015, S223825; *People v. Guzman* (2015) 235 Cal.App.4th 847, review granted June 17, 2015, S226410, briefing deferred pursuant to rule 8.520 Cal. Rules of Court; *People v. Davis* (2015) 234 Cal.App.4th 1001, review granted June 10, 2015, S225603, briefing deferred pursuant to rule 8.520 Cal. Rules of Court.)

Penal Code, including, as relevant here, Proposition 36 (§ 1170.126, subd. (f)).

The People argue Proposition 47's reference to "this Code" is ambiguous, and they cite two apparent inconsistencies within the text of section 1170.18 to make the case. First, they note the definition in section 1170.18, subdivision (c) is limited to "an unreasonable risk that *the petitioner* will commit" a super strike. (§ 1170.18, subd. (c), italics added.) The People argue "the petitioner" can only mean a person who files a petition under section 1170.18, subdivision (a), as the statute does not refer to any other kind of petition. Additionally, the People emphasize that the consequence of applying Proposition 47's dangerousness definition throughout the Penal Code would conflict with the express directive set forth in section 1170.18, subdivision (n). That provision states, "Nothing 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*." (§ 1170.18, subd. (n), italics added.) If a court ruling on a Proposition 36 petition must grant the petition unless it finds an unreasonable risk the petitioner will commit a super strike under the restrictive definition provided in section 1170.18, subdivision (c), the People maintain the finality of the underlying judgment will be "diminish[ed]" even though the case does not "[fall] within the purview of [Proposition 47]." (§ 1170.18, subd. (n).)

Though we disagree with the People's premise that section 1170.18, subdivision (c)'s reference to "this Code" is ambiguous, we find the apparent inconsistencies identified by the People do indicate the electorate may have erroneously used the word

"Code," where it intended to use the word "act."[3] Although courts are reluctant to simply rewrite an initiative, there is precedent for "correcting" initiative language in appropriate circumstances. Our Supreme Court explained the principle in *People v. Skinner*: " 'We recognize the basic principle of statutory and constitutional construction which mandates that courts, in construing a measure, not undertake to rewrite its unambiguous language. [Citation.] That rule is not applied, however, when it appears clear that a word has been erroneously used, and a judicial correction will best carry out the intent of the adopting body. . . . Whether the use of [a particular word] is, in fact, a drafting error

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[3] As for the reference to "this Code," other statutes using similar language have been construed as unambiguously referring to the entire code in which such statutes appeared. For instance, in *Marshall v. Pasadena Unified School Dist*. (2004) 119 Cal.App.4th 1241, the court considered a provision in the Public Contract Code defining the term "emergency" " 'as used in this code.' " (*Marshall*, at p. 1255, italics omitted.) The *Marshall* court found there was "nothing ambiguous about the phrase 'as used in this code.' " (*Ibid*.) In enacting the subject section, "the Legislature did not merely define the term 'emergency' for a particular chapter, article or division of the Public Contract Code—rather, it defined the term 'emergency' for the entire Public Contract Code." (*Marshall*, at p. 1255.) Thus, the *Marshall* court reasoned, "[i]t logically follows the definition . . . must be read into [all other sections using that term]." (*Ibid*.; see also *People v. Bucchierre* (1943) 57 Cal.App.2d 153, 166 [concluding phrase " 'as in this code provided' " used in section 182, referred to the Penal Code]; cf. *People v. Vasquez* (1992) 7 Cal.App.4th 763, 766-767 [concluding phrase " '*as used in this title*' " in former section 12001.1 limited statute's definition of " 'firearm' " to sentence enhancements under Part 4, Title 2 of the Penal Code].)

can only be determined by reference to the purpose of the section and the intent of the electorate in adopting it." (*People v. Skinner* (1985) 39 Cal.3d 765, 775-776.) For the reasons that follow, we conclude the use of the word "Code" rather than "act" in section 1170.18, subdivision (c) was a drafting error properly subject to judicial correction.

Read as a whole, section 1170.18's language offers the first indication that the drafters and electorate erroneously used "this Code" in subdivision (c) where they intended to refer to "this act." As discussed, subdivision (c) refers to "the petitioner," a term that is used throughout Proposition 47 to refer to persons petitioning under "this section" or "this act." (See § 1170.18, subds. (a), (b), (c), (j), (1), & (m).) More compelling is subdivision (n)'s pronouncement that "Nothing 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*." (Italics added.) Unless subdivision (c)'s "unreasonable risk of danger" definition is limited to "this act," the finality of judgments rendered under Proposition 36 would most certainly be diminished. Taken together, these provisions strongly indicate the drafters and electorate intended subdivision (c)'s dangerousness definition to be applied only with respect to petitions brought under Proposition 47.

Likewise, the official title and summary, legal analysis, and arguments for and against Proposition 47 nowhere suggest that Proposition 47 will have an impact on Proposition 36. (Voter Information Guide, Gen. Elec. (Nov. 4, 2014), Prop. 36, Analysis by Legislative Analyst, pp. 34-39.) The ballot materials do not, for example, say that Proposition 47 will severely restrict the ability of courts to reject resentencing petitions under Proposition

36. Rather, the ballot materials emphasize that Proposition 47's resentencing provisions will affect only those persons serving sentences for specified nonserious, nonviolent property or drug crimes.

Furthermore, Propositions 36 and 47 have different purposes. Proposition 36 is designed to reduce penalties for individuals with two or more prior serious or violent felony convictions, whose current conviction is also a felony. By contrast, Proposition 47 is intended to reduce penalties for low-level offenders who have committed "certain nonserious and nonviolent property and drug offenses." (Voter Information Guide, *supra*, Prop. 36, Analysis by Legislative Analyst, Proposal, p. 35.) As discussed with respect to the ballot materials, the purpose of Proposition 47 belies the notion that voters intended it to affect inmates convicted of crimes *other* than those property or drug crimes specified in Proposition 47.

Lastly, Proposition 47's timing is inconsistent with an intention to affect Proposition 36 petitions. Proposition 36 required defendants to file petitions within two years from its enactment absent a showing of good cause for a late petition. (§ 1170.126, subd. (b).) Proposition 47 was enacted with only two days remaining in the two-year period for filing Proposition 36 petitions. A rational voter would not have understood Proposition 47 to change the rules for Proposition 36 petitions when the period for filing such petitions had almost expired.

For the foregoing reasons, we conclude section 1170.18, subdivision (c) contains a drafting error—the use of the word "Code"—that must be judicially corrected to read "act." Read as such, Proposition 47's definition of "unreasonable risk of danger to public safety" does not apply to Proposition 36.

5. *The Trial Court Reasonably Exercised Its Discretion to Deny the Petition*

Proposition 36 vests the trial court with discretion to deny a statutorily-eligible petition if the court "determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.126, subd. (f).) In exercising that discretion, "the court may consider: [¶] (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (*Id.*, subd. (g).)

"Where . . . a discretionary power is statutorily vested in the trial court, its exercise of that discretion 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]' [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.) Factual findings underlying the court's exercise of discretion are subject to review for substantial evidence. (See *People v. Cluff* (2001) 87 Cal.App.4th 991, 998 [trial court abuses its discretion when factual findings critical to decision find no support in record].) Thus, "[w]e review the whole record in a light most favorable to the [order] to determine whether it contains substantial evidence, i.e., evidence that is credible and of solid value" upon which the court could base its conclusions. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 859.)

"Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

The evidence relating to the statutory factors set forth in section 1170.126, subdivision (g) supports the trial court's finding that Rocha posed an unreasonable danger to public safety if resentenced. Beginning with Rocha's criminal history, the evidence showed Rocha had a sustained juvenile petition for battery, two convictions for first degree burglary, a misdemeanor violation for possession of marijuana, and finally the commitment offense for offering to sell heroin. The trial court acknowledged that Rocha's prior offenses were remote, but reasoned that the remoteness was hardly dispositive since Rocha had consistently reverted to crime shortly after release and, thus, spent much of the time preceding the commitment offense in custody.

The trial court also considered Rocha's disciplinary history and rehabilitative programming in prison. Rocha's disciplinary history included five serious rule violations since his incarceration for the commitment offense. The court found two of these violations especially probative of Rocha's current risk of danger because they occurred *after* he filed his petition for resentencing and related to his affiliation with the Mexican Mafia.[4] Additionally, Rocha had a serious rule violation for

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[4] The violations consisted of possessing a gang-related letter, or "kite," discussing Mexican Mafia activities and possession of artwork containing gang-related symbols. Though Rocha testified that the kite belonged to his cellmate and that he was unaware of the gang-related symbols in the artwork, the trial court found his testimony was not credible.

possessing 45 "hits" of heroin, an amount indicating he engaged in selling the drug. The court acknowledged that Rocha had taken positive steps in his programming, such as participating in educational programs, Alcoholics Anonymous, Narcotics Anonymous and the Crime Impact Program, but found his gains in those programs were outweighed by elements of his disciplinary history that demonstrated he still posed a danger to public safety.

Finally, the trial court considered evidence concerning Rocha's validated association with the Mexican Mafia. Rocha was initially validated as a Mexican Mafia associate in 2008 and he was revalidated in 2014. He admitted to being in a gang while in the community, but claimed he left "gang life" in 1988 or 1989. Rocha testified that he did not plan to engage in gang activity if released. The court rejected this testimony, relying on the evidence supporting Rocha's gang validation and testimony by the People's gang validation expert.

The California Department of Corrections and Rehabilitation (CDCR) initially validated Rocha based on (1) an address book he kept containing the names and addresses of validated Mexican Mafia associates and a Mexican Mafia "mail drop"; (2) a statement he made identifying another inmate who was a Mexican Mafia associate; and (3) a letter he wrote to an associate in the community asking her to pass a message to a third party "mail drop" after his address book was discovered. He was revalidated in 2013 after corrections officers discovered a gang-related letter and artwork containing gang-related symbols in his possession. While Rocha's gang expert and the People's gang expert disagreed about the implications of being a Mexican Mafia "associate," both agreed that Rocha was properly validated

under the CDCR standards in place at the time. Further, the People's gang expert opined that Rocha's 2013 rule violations indicated he was still " 'aiding and working with' " the Mexican Mafia and that, if released, this evidence showed he would likely be compelled to advance the gang's interests in the community. Based on the Mexican Mafia's mode of operation, and Rocha's validated association with the gang, the People's expert opined that Rocha " '**will pose** an unreasonable risk of danger to the public.' " In view of the gang evidence, coupled with Rocha's history of committing offenses shortly after returning to the community and his disciplinary history while incarcerated, we cannot say it was arbitrary, capricious or patently absurd for the court to accept and adopt that conclusion.

Rocha contends the foregoing evidence was insufficient to support the court's unsuitability determination because none of it demonstrated a propensity for violence. Contrary to Rocha's premise, we need not decide whether the evidence, when viewed in the light most favorable to the trial court's ruling, would support a finding that Rocha posed an unreasonable risk of *violence*, because Proposition 36 affords the trial court discretion to deny the petition where the court finds resentencing poses an "unreasonable risk of *danger* to public safety." (§ 1170.126, subd. (f), italics added.)

It is true that apart from a sustained juvenile petition for battery, none of Rocha's criminal offenses or established gang-related conduct involved acts of violence. However, section 1170.126, subdivision (f) does not say a petitioner shall be resentenced unless the court determines resentencing would pose an unreasonable risk of *violence*; rather, the statute speaks in terms of danger to public safety. That a crime can constitute a

danger to public safety without being violent is not a novel concept. (See, e.g., *People v. Hughes* (2002) 27 Cal.4th 287, 355 [" ' " 'Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence.' " ' "]; *People v. Villalobos* (2006) 145 Cal.App.4th 310, 317 [same].) Indeed, the concept is codified in the Three Strikes law, which includes in its definition of a "serious felony" nonviolent offenses such as first degree burglary and furnishing drugs to a minor. (§ 1192.7, subds. (c)(18) & (24).) Likewise, Proposition 36 disqualifies persons convicted of certain narcotics offenses from eligibility for resentencing. (See §§ 1170.126, subd. (e)(2); 667, subd. (e)(2)(C)(i); 1170.12, subd. (c)(2)(C)(i).) Moreover, although the ballot materials concerning Proposition 36 focused on violent criminals, section 7 of the Three Strikes Reform Act provides: "This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes." (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 7, p. 110.) Thus, to condition resentencing denials upon the likelihood of future *violence*, as Rocha's premise entails, would run contrary to the language of section 1170.126, subdivision (f)

and the voters' intent. The trial court did not abuse its discretion.[5]

DISPOSITION

The order is affirmed.

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STRATTON, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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[5] Rocha also contends the trial court improperly discounted his rehabilitative programming, which was severely curtailed by his placement in the secure housing unit under gang validation standards that were later amended. We are not persuaded. Rocha's rehabilitative programming was but one element considered by the court and we cannot find, based on this record, that more robust rehabilitative participation would have resulted in a more favorable ruling in view of the salient gang evidence underpinning the court's ruling.

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