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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Appellant,

v.

JORGE TEJADA,

Defendant and Respondent.

2d Crim. No. B271963
(Super. Ct. No. GA011959)
(Los Angeles County)

Jorge Tejada appeals a postjudgment order denying his petition for a certificate of rehabilitation and pardon. (Pen. Code, § 4852.01.)¹ The trial court found that appellant’s 1996 conviction for lewd act on a child (§ 288, subd. (c)) rendered appellant ineligible for relief. (§ 4852.01, subd. (c).) We affirm. “The standards for determining whether rehabilitation has occurred are high. . . . [T]here is no circumstance under which the statutory scheme requires or guarantees issuance of a certificate of rehabilitation” (*People v. Ansell* (2001) 25 Cal.4th 868, 887-888.)

¹ All statutory references are to the Penal Code.

Procedural History

In 1992, appellant pled nolo contendere to the “wobbler” offense of lewd conduct with a 15-year-old minor. (§§ 17, subd. (b); 288, subd. (c).) In 1996, after appellant completed probation, the trial court declared the offense a misdemeanor (§ 17, subd. (b)(3)) but denied appellant’s motion to expunge the conviction. This court affirmed the ruling in a nonpublished opinion. (*People v. Tejada* (Dec. 21, 1999, B130997) [nonpub. opn.])

In 2002, appellant obtained an expungement order after the trial court corrected the 1996 sentencing order nunc pro tunc to reflect that the lewd conduct violation was dismissed pursuant to section 1203.4, subdivision (a). Appellant thereafter filed a motion to release him of the section 290 obligation to register as a sex offender, which the trial court denied in 2005. Appellant appealed from the order but the appeal was dismissed as untimely. (*People v. Tejada* (Nov. 20, 2006, B187549) [nonpub. opn.])

In 2016, appellant filed a petition for a certificate of rehabilitation and pardon. Denying the petition, the trial court found that the appellant was ineligible for relief due to the nature of the crime. (§ 4852.01, subd. (c).)

Discussion

Section 4852.01 governs the procedure to obtain a certificate of rehabilitation, which is an intermediate step toward securing a full pardon from the Governor. (*People v. Ansell*, *supra*, 25 Cal.4th 868, 875-876.) Section 4852.01, subdivision (b) provides: “A person convicted of a felony or a person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been

dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years' residence in this state prior to the filing of the petition.” Section 4852.01, subdivision (c) provides that persons convicted of lewd conduct on a child are ineligible for relief.²

Appellant contends that the exclusion does not apply because his conviction was dismissed pursuant to section 1203.4. The argument is premised on the theory that a section 1203.4 dismissal renders the conviction a nullity, as if it never existed. But that is not the law. “[S]ection 1203.4 does not, strictly speaking, ‘expunge’ the conviction, [n]or render the conviction ‘a legal nullity.’ [Citation.]” (*People v. Guillen* (2013) 218

² Section 4852.01, subdivision (c) states: “*This chapter does not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of Section 269, subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, Section 288.7, or subdivision (j) of Section 289, or persons in military service.*” (Italics added.) Subdivision (c) [formerly subdivision (d)] was enacted in 1997 along with subdivision (e) [now subdivision (d)], which provides that the Governor may pardon individuals convicted of specified sex offenses in extraordinary circumstances. (Vol. 3 West’s Cal. Legislative Service (Stats. 1997, ch. 61, § 2, p. 294).)

Cal.App.4th 975, 996.) Sections 4852.01 and 1203.4 serve significantly different purposes, the former providing for certificates of rehabilitation, while the latter affects criminal penalties and disability. (*People v. Mgebrov* (2008) 166 Cal.App.4th 579, 594.)

We are precluded from rewriting section 4852.01, subdivision (c) which provides that the conviction for lewd conduct on a minor renders appellant ineligible for a certificate of rehabilitation. (See *People v. Lockwood* (1998) 66 Cal.App.4th 222, 226 [statutory changes to section 4852.01 reflect Legislature’s obvious intent to apply stricter standards to the application process]; *Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1699 [court does not sit as “Super Legislature” in construing statute].) Appellant makes no showing that the trial court’s ruling was arbitrary, whimsical, or capricious. (*People v. Zeigler* (2012) 211 Cal.App.4th 638, 667-668.)

The judgment (order denying petition for certificate of rehabilitation and pardon) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

James R. Brandlin, Judge

Superior Court County of Los Angeles

Rich Pfeiffer, under appointment by the Court of
Appeal, for Defendant and Appellant.

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