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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE J. GARCIA,

Defendant and Appellant.

2d Crim. No. B264069
(Super. Ct. No. 2012020852)
(Ventura County)

Rene J. Garcia appeals the trial court's order resentencing him under Proposition 47 with credit for time served and placing him on one year of misdemeanor parole. (Pen. Code,¹ § 1170.18.) Appellant contends the court erred in placing him on misdemeanor parole. He alternatively contends the court erred in refusing to deduct his excess custody credits from his term of misdemeanor parole; and in failing to limit the term of parole to ensure he is not subjected to a longer term than his original sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

In June 2012, appellant pled guilty to street terrorism (§ 186.22, subd. (a)) and second degree burglary (§ 459) and admitted two prior prison term enhancement allegations (§ 667.5, subd. (b)). After reducing the street terrorism charge to a

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

misdemeanor under section 17 and striking the prison priors, the court sentenced appellant to 16 months in state prison for the burglary and awarded him 169 days of presentence custody credit.

In January 2013, appellant was released from prison and placed on post-release community supervision (PRCS). On November 14, 2014, he was taken into custody on another criminal matter.² On November 20, 2014, appellant petitioned for recall of his sentence and resentencing under Proposition 47. On March 10, 2015,³ the court recalled appellant's sentence, designated his second degree burglary conviction as a misdemeanor, and ordered him to serve 365 days in county jail with credit for time served. The court also vacated appellant's PRCS status and placed him on one year of misdemeanor parole. Appellant's motion to have his excess custody credits applied against his term of misdemeanor parole was denied.

On April 27, appellant appeared in court on a parole revocation warrant. The court ordered appellant to remain in custody until May 4, pending the filing of a petition to revoke parole; if no petition was filed by that date, the parole hold would be dropped and appellant would be released from custody. Appellant renewed his request to have his excess credits applied against his term of parole, and that request was denied.

DISCUSSION

Appellant contends the court erred in placing him on one year of misdemeanor parole after it resentenced him under Proposition 47. He alternatively claims the court erred in refusing to deduct his excess custody credits from his term of

² We grant appellant's unopposed request for judicial notice of the relevant docket entries in Ventura County Superior Court, Case No. 2013033752, which reflect that he was in custody in that case when he petitioned for resentencing in this instant case. We also grant his request for judicial notice of the full text of Proposition 47, and the Official Voter Information Guide for the November 14, 2014, general election. (Evid. Code, §§ 452, 453.)

³ Unless otherwise noted, all further date references are to the year 2015.

misdemeanor parole, and failing to limit the term of parole to ensure he is not subjected to a longer term than his original sentence. None of these claims has merit.

Proposition 47 reclassified certain drug- and theft-related offenses from felonies or "wobblers" to misdemeanors. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091-1092.) Section 1170.18 allows those convicted of a reclassified offense prior to November 5, 2014, to petition for a reduction of their conviction from a felony to a misdemeanor. A person "currently serving a sentence" for a reclassified offense may petition to have his or her sentence recalled and be resentenced to a misdemeanor (§ 1170.18, subds. (a) & (b)), while one who has "completed his or her sentence" for such an offense may apply to have the conviction designated as a misdemeanor (§ 1170.18, subd. (f)). A person resentenced to a misdemeanor under subdivision (b) is "given credit for time served" and is "subject to parole for one year following completion of his or her sentence." (§ 1170.18, subd. (d).)

Appellant asserts that the court erroneously placed him on misdemeanor parole after resentencing him to a misdemeanor because he had already "completed his . . . sentence" for the reclassified offense. We disagree. Appellant had not yet completed his sentence when he was released from prison and placed on PRCS because PRCS "constitutes part of the punishment for the underlying crime." (*People v. Nuckles* (2013) 56 Cal.4th 601, 608.) Felony parole supervision or PRCS is, with exceptions not relevant here, a mandatory feature of every "'sentence resulting in imprisonment in the state prison . . .'" (*Id.* at p. 609, quoting § 3000, subd. (a)(1).) We presume that the voters who enacted Proposition 47 were aware of this statutory requirement. (See, e.g., *People v. Superior Court (Cervantes)* (2014) 225 Cal.App.4th 1007, 1015 [voters enacting Proposition 36 are deemed to have been aware of existing statutes].) We accordingly presume that the voters intended subdivisions (a)'s and (f)'s felony "sentence" to include PRCS. Because appellant had not completed his PRCS term when he petitioned for relief under Proposition 47, he had not completed his sentence. (*People v. Nuckles, supra*, at p. 609.) The court thus properly resentenced him under subdivision (b) of section 1170.18,

rather than subdivision (f), and correctly placed him on misdemeanor parole in accordance with subdivision (d).

We also reject appellant's claim that the court erred in refusing to deduct his excess custody credits from his one-year term of misdemeanor parole.⁴ Section 1170.18, subdivision (d) plainly and unambiguously provides that "[a] person who is resentenced . . . shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion . . . releases the person from parole." The phrase, "shall be given credit for time served and shall be subject to parole for one year," indicates that, irrespective of the amount of credit for time served on the felony offense before it was reduced to a misdemeanor, the petitioner shall be subject to parole for one year. (*Ibid.*) Otherwise, the phrase would read, "shall be given credit for time served and shall be subject to parole for one year unless credit for time served reduces the one-year parole period." The statutory language makes clear that the only exception to the one-year parole requirement is if the court releases the person from that requirement in the exercise of its discretion. "[T]he existence of specific exceptions does not imply that others exist. The proper rule of statutory construction is that the statement of limited exceptions excludes others, and therefore the judiciary has no power to add additional exceptions; the enumeration of specific exceptions precludes implying others." [Citation.]" (*In re James H.* (2007) 154 Cal.App.4th 1078, 1083-1084; see also *Building Profit Corp. v. Mortgage & Realty Trust* (1995) 36 Cal.App.4th 683, 689 ["When a statute contains an exception to a general rule laid down therein, that exception is strictly construed . . . [and] [o]ther exceptions are necessarily excluded"].)

If the language of section 1170.18, subdivision (d), were ambiguous, the ambiguity would be cured by the Legislative Analyst's comments in the official ballot

⁴ This issue is before the California Supreme Court in *People v. Morales*, No. S228030, review granted Aug. 26, 2015. The Supreme Court has granted review in two cases decided by this court that involve the same issue: *People v. McCoy*, No. S229296, review granted Oct. 14, 2015; and *People v. Hickman*, No. S227964, review granted Aug. 26, 2015.

pamphlet. The Legislative Analyst informed the voters: "Offenders who are resentenced would be required to be on state parole for one year, unless the judge chooses to remove that requirement." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014), Prop. 47, Analysis by Legislative Analyst, p. 36.) Any voter who read this statement would have assumed that a one-year period of parole is mandatory unless the judge reduces or eliminates it. "The Legislative Analyst's comments, like other materials presented to the voters, 'may be helpful but are not conclusive in determining the probable meaning of initiative language.' [Citation.] Thus, when other statements in the election materials contradict the Legislative Analyst's comments we do not automatically assume that the latter accurately reflects the voters' understanding. [Citation.]" (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 580.) Nothing in the election materials for Proposition 47 contradicts the Legislative Analyst's conclusion that a person resentenced to a misdemeanor "would be required to be on state parole for one year." This is the only statement in the election materials concerning the one-year misdemeanor parole period. (See *People v. Superior Court (Henkel)* (2002) 98 Cal.App.4th 78, 82 [Legislative Analyst's comment "eliminates doubt" as to correct interpretation of ballot proposition].) Accordingly, the court correctly refused to apply appellant's excess custody credits to reduce his one-year term of misdemeanor parole.

Finally, we reject appellant's claim that his one-year term of misdemeanor parole must be reduced to ensure that his resentencing does not "result in the imposition of term longer than the original sentence," as provided in subdivision (e) of section 1170.18. Misdemeanor parole imposed pursuant to subdivision (d) of section 1170.18 is "in addition to any resentence imposed by the court" (Couzens et al., Proposition 47 "The Safe Neighborhoods and Schools Act" (February 2015), p. 56, at www.courts.ca.gov/documents/Prop-47-Information.pdf.) The term of parole is entirely separate from the term of imprisonment. Interpreting section 1170.18, subdivision (e) in the manner asserted by appellant would defeat the purpose of the misdemeanor parole

requirement, undermine the plain language of the statute, and be contrary to the Legislative Analyst's comments on the subject.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Kevin J. McGee, Judge

Superior Court County of Ventura

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant and Appellant.

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