Filed 10/31/16 In re A.R. CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| In re A.R., a Person Coming Under the Juvenile Court Law. | B267556 |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>A.R.,<br><br>Defendant and Appellant. | (Los Angeles County Super. Ct. No. FJ52209) |

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Totten, Judge. Affirmed as modified.

Tonja R. Torres, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Plea agreements are negotiated by the People and the defendant (or minor) and require judicial approval prior to becoming effective. (*People v. Segura* (2008) 44 Cal.4th 921, 929-930.) In this case, minor A.R. initially pled guilty to attempted robbery. His admission, however, was inconsistent with the parties' negotiated agreement requiring A.R. plead to an offense qualifying as a strike under the "Three Strikes" law. The trial court accepted the plea, but later granted the prosecutor's motion to vacate it because it was inconsistent with the parties' agreement.

On appeal, A.R. argues that the trial court erred in vacating his plea. We find no error because it was *undisputed* that the vacated plea did not conform to the parties' agreement. We modify the dispositional order to accurately reflect A.R.'s presentence credits and affirm the dispositional order as modified.

## BACKGROUND

In a seven-count petition under Welfare and Institutions Code section 602, A.R. was charged with three counts of second degree robbery, one count of attempted second degree robbery (count 3), two counts of assault with a deadly weapon, and one count of dissuading a witness from prosecuting a crime. A gang enhancement was alleged with each offense.

In pretrial plea negotiations, the parties agreed that A.R. would plead guilty to one count involving a strike offense and to the gang enhancement. Further, the parties agreed A.R. would be sentenced to a long-term camp placement. The remaining counts would then be dismissed. Yoobin Kang represented the prosecution in these negotiations.

Kang could not attend the plea hearing and asked fellow prosecutor James Evans to take a plea to "count 3," the attempted robbery. Kang did "not realiz[e] that it was not a strike" offense.

At a hearing, A.R. pled guilty to count 3—attempted robbery—and to the gang enhancement. In pleading to the attempted robbery, A.R. acknowledged that he was admitting to a strike offense (even though attempted robbery is not a strike offense). On August 12, 2015, the trial court entered a dispositional order finding A.R. admitted count 3. The August 12 dispositional order dismissed the remaining counts.

Subsequently, prosecutor Kang moved to vacate the dispositional order because A.R. did not plead guilty to a strike offense. A.R.'s counsel acknowledged that the parties agreed A.R. would admit to "a strike." According to the trial court, A.R.'s counsel must have believed count 3 was a strike because she did not advise the court that the plea was inconsistent with the parties' agreement.

On September 21, 2015, the trial court vacated its August 12 dispositional order. Immediately afterwards, A.R. pled guilty to one count of robbery and admitted the gang allegation. The remaining counts were dismissed. The trial court entered a new dispositional order, finding A.R. admitted count 1 (robbery) and admitted the gang allegation.

This appeal followed. On appeal, it is undisputed that A.R. agreed to plead to a strike and that attempted robbery (count 3) did not qualify as a strike under Penal Code section 667, subdivision (d)(3).

## DISCUSSION

The principal issue on appeal is whether the trial court properly vacated A.R.'s admission and the August 12 dispositional order.[1] A.R. also argues that the court failed to properly calculate his predisposition credits, and that contention is undisputed.

### *1. The Trial Court Properly Vacated Its Initial Dispositional Order and Entered a New One*

Relying on *People v. Superior Court* (*Sanchez*) (2014) 223 Cal.App.4th 567 (*Sanchez*), respondent argues that the trial court properly vacated A.R.'s admission to attempted robbery and the court's August dispositional order. Relying on *Amin v. Superior Court* (2015) 237 Cal.App.4th 1392 (*Amin*), A.R. argues that the August dispositional order must be reinstated.

Both parties cite to general contract principles in support of their arguments. Our Supreme Court repeatedly has held that contract principles are applicable to interpret plea agreements.

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[1] There is no merit to respondent's contention that A.R. cannot challenge the trial court's order vacating his admission on appeal. The dispositional order in a Welfare and Institutions Code section 602 proceeding is an appealable judgment. (Welf. & Inst. Code, § 800, subd. (a); *In re Z.A.* (2012) 207 Cal.App.4th 1401, 1405, fn. 2.) The court entered the first dispositional order on August 12, 2015. The court then vacated A.R.'s admission and entered a new dispositional order on September 21, 2015. The second dispositional order is appealable as a judgment. (*Ibid.*) The appeal from the September 21, 2015 dispositional order includes prior orders such as the order vacating A.R.'s admission. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 255 [" '[A]n appellate court may review any question of law involved in any order made prior to judgment.' "].)

(*Doe v. Harris* (2013) 57 Cal.4th 64, 69; *People v. Martin* (2010) 51 Cal.4th 75, 79; *People v. Segura* (2008) 44 Cal.4th 921, 930-931; *People v. Shelton* (2006) 37 Cal.4th 759, 767.) Our Supreme Court further has concluded that " '[t]he fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.' " (*Shelton, supra*, at p. 767.) " 'The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties." (*Ibid*.) "If contractual language is clear and explicit, it governs." (*Ibid*.) In addition to contract principles, due process must be considered when analyzing a plea. (*People v. Crandell* (2007) 40 Cal.4th 1301, 1307.)

*Sanchez* involved a plea agreement based on a mutual mistake of law. Specifically, the plea required the trial court to impose an unauthorized sentence. (*Sanchez, supra*, 223 Cal.App.4th at p. 569.) Because the parties' agreement resulted in an unauthorized sentence, the trial court unilaterally modified the plea by reducing the penalty to conform with the term authorized by law. (*Ibid*.) The appellate court held that the trial court exceeded its jurisdiction by reforming the negotiated plea. (*Id*. at p. 570.) The trial court's reformation denied the prosecution the benefit of its bargain. (*Ibid*.) The *Sanchez* court explained: "A trial court exceeds its jurisdiction when it alters the terms of a negotiated plea without the People's consent to make the bargain more favorable to the defendant." (*Id*. at

p. 572.) The People were permitted to rescind the agreement because it was based on a mutual mistake of law, and the agreement could not become effective as drafted. (*Id*. at p. 573.)

In contrast to *Sanchez*, the *Amin* court rejected the People's efforts to rescind a plea agreement based on the prosecutor's failure to carefully read police reports prior to agreeing that the defendant would not be prosecuted for crimes mentioned in the police reports. (*Amin, supra*, 237 Cal.App.4th at pp. 1395, 1400.) The *Amin* court held that the prosecutor bore the risk of the mistake that "resulted from her failure to read the report more carefully." (*Id*. at pp. 1404, 1407.) The court emphasized that the prosecutor could have learned the accurate facts prior to entering the agreement and concluded that the prosecutor's "purported ignorance of or mistake about that fact will not suffice to void the agreement." (*Id*. at p. 1405.) The prosecutor's failure to take care prior to entering the agreement was "not grounds for excusing compliance with its stated terms." (*Id*. at p. 1406.) The *Amin* court further explained that " 'to allow the state to revoke plea agreements made through negligence on the part of the district attorney's office might [well] encourage such negligence. Requiring the district attorney to know the pertinent facts in a given case before entering a plea bargain will prevent such negligence and will ensure fairness to both the [s]tate and the defendant.' " (*Id*. at p. 1409.)

*Amin* cited to the Ninth Circuit's *U.S. v. Partida-Parra* (9th Cir. 1988) 859 F.2d 629 (*Partida-Parra*), which like this case involved two prosecutors and a botched plea. In *Partida-Parra*, the first prosecutor made clear that he would accept only a felony plea from the defendant. (*Id*. at p. 630.) The second prosecutor, who stood in for the first, reached a misdemeanor plea

agreement, which was entered and accepted by the court. (*Id.* at p. 631.) The first prosecutor then moved to set aside the misdemeanor guilty plea. (*Ibid.*) The district court set aside the defendant's guilty plea, and the defendant appealed. (*Id.* at p. 630.)

The appellate court failed to reach a unanimous decision. The majority concluded that the district court lacked discretion to vacate a guilty plea accepted by the court. The majority explained: "We do not believe that the plea-agreement/contract analogy extends so far as to allow the district court to revisit an accepted plea to reconsider whether the 'contract' was formed . . . ." (*Partida-Parra, supra*, 859 F.2d at p. 634.) The government was not entitled to relief resulting from a miscommunication between the two prosecutors. (*Ibid.*) The majority made clear that it was not considering a cause involving fraud or misrepresentation. (*Id.* at p. 634, fn. 6.) In contrast, the *Partida-Parra* dissent concluded that any contractual defense should be available to both the prosecution and defense and based on the government's mistake —having defendant plead to a misdemeanor instead of a felony charge—the agreement should have been rescinded. (*Id.* at p. 636.)

Citing *Partida-Parra*, the Ninth Circuit has held that "once the district court accepts a guilty plea, absent fraud or breach of the plea agreement by the defendant, the court has no authority to vacate the guilty plea because of a government motion asserting 'that a mistake of fact (on the government's part) prevented the formation of a binding agreement.' " (*U.S. v. Fagan* (9th Cir. 1993) 996 F.2d 1009, 1013.) Similarly, the Tenth Circuit has rejected a prosecutor's effort to amend a plea to "count eleven" which was a misdemeanor offense when the

prosecutor mistakenly believed it was a felony. (*U.S. v. Frownfelter* (10th Cir. 2010) 626 F.3d 549, 551 (*Frownfelter*).) In that case, the parties had agreed that the defendant would plead guilty to count eleven, not that he would plead guilty to a felony. (*Id*. at p. 552.)

None of these cases are analogous to the present one. *Sanchez* is distinguishable because it involved a plea agreement with an unauthorized sentence. The trial court could not effectuate the intent of the parties. Its reformation of the agreement did not implement the parties' agreement. Here, no such unauthorized sentence would result from the implementation of the parties' agreement that required A.R. plead guilty to a strike offense. Additionally, in contrast to *Amin*, *Partida-Parra*, and *Frownfelter*, here both parties agree that A.R.'s plea did not reflect their agreement. The carelessness in this case led to a plea that was unreflective of the parties' agreement rather than a bad agreement on the part of the prosecution.

The remaining question is whether a plea that indisputably failed to implement the parties' agreement may be vacated. The plea itself was clear and unambiguous and cannot be altered by parole evidence. (*People v. Toscano* (2004) 124 Cal.App.4th 340, 345.) However, contract principles make clear that a party to a contract may be entitled to rescission on the ground of mistake. (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 267.) Rescission is generally available for a unilateral mistake when, as in this case, the mistake is known to the other party. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 854-855; Rest.2d Contracts, § 153.) A.R.'s defense counsel admitted that A.R. agreed to plead to a strike. (A.R. does not challenge on

appeal the trial court's finding that defense counsel should have advised the court that count 3 was not a strike had she been aware of that information.) Recission was therefore proper and the court properly vacated A.R.'s admission. (*Bunnett v. Regents of University of California, supra*, 35 Cal.App.4th at pp. 854-855; cf. *U.S. v. Bradley* (2004) 381 F.3d 641, 648.)

A.R.'s emphasis on the principle that the government must abide by the terms of the agreement is misplaced because the terms of the agreement were that A.R. would plead to a strike. A.R. was not deprived of the benefit of his bargain by vacating his plea to attempted robbery because he did not plead guilty to a strike offense as the parties agreed. The trial court properly vacated A.R.'s admission.[2]

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[2] We recognize that federal courts have held contract principles are not always applicable to pleas. (*U.S. v. Oleson* (8th Cir. 1990) 920 F.2d 538, 541; *Partida-Parra, supra*, 859 F.2d at p. 634.) Nevertheless, federal courts have reformed plea agreements so that they conform to the parties' intent. (*U.S. v. Bailey* (4th Cir. 2013) 549 Fed.Appx. 171, 172 [reforming a plea agreement when it did not conform to the parties' agreement]; *U.S. v. El Amin* (3d Cir. 2006) 200 Fed.Appx. 75, 78 ["Reformation is appropriate only where the mistake is mutual and the contract 'fails to express the agreement.' "]; *U.S. v. Weaver* (11th Cir. 1990) 905 F.2d 1466, 1472 [modifying immunity agreement that failed to conform to the agreement of the parties by borrowing the idea of "reformation" from contract law]; but see *U.S. v. Florida West International Airways, Inc.* (2012) 853 F.Supp.2d 1209, 1239 [finding reformation unavailable to a plea agreement entered into by the parties and accepted by the court].)

***2. Presentence Credits***

"[A] minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing." (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) It is undisputed that A.R. was entitled to 278 days of presentence credits. The record reflects that defendant was in custody—from December 18, 2014, through September 21, 2015—278 days. We modify the judgment to reflect the correct number of presentence credits.

**DISPOSITION**

The disposition order dated September 21, 2015, is modified to reflect 278 days of presentence conduct credit. As modified the disposition order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.