Filed 2/9/16 In re T.H. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

In re T.H., a Person Coming Under the Juvenile Court Law.	B260535
THE PEOPLE, Plaintiff and Respondent, v. T.H., Defendant and Appellant.	(Los Angeles County Super. Ct. No. MJ21404)

APPEAL from a judgment of the Superior Court of Los Angeles County. Denise McLaughlin-Bennett, Judge. Affirmed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General and Lance E. Winters, Assistant Attorney General, Mary Sanchez and Zee Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant T.H. was declared a ward of the juvenile court and her maximum term of confinement was calculated. Thereafter, the voters passed Proposition 47 (Prop 47), which affected the maximum term that could be imposed for one of her offenses. She sought recalculation of the term pursuant to Prop 47. The juvenile court granted partial relief. T.H. appeals, seeking further relief. On our own motion, we sought additional briefing regarding other potential errors in the court's calculation of T.H.'s maximum term of confinement. The parties briefed the issues and now agree on the proper calculation of appellant's maximum term. We therefore modify the maximum term of confinement consistent with the parties' concession, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties are in agreement as to the lawful maximum terms of the confinement. Because we also agree, we need engage in only an abbreviated discussion of the factual and procedural history. In March 2012, appellant shoplifted $14 worth of candy and ice cream from a local market. In connection with this conduct, a petition was filed alleging she was described by Welfare and Institutions Code section 602, for having committed second degree commercial burglary (Pen. Code, § 459), a felony, and petty theft (Pen. Code, § 484, subd. (a)), a misdemeanor.

While awaiting adjudication of that petition, appellant vandalized some school property worth $200. A supplemental petition was filed, alleging misdemeanor vandalism. (Pen. Code, § 594, subd. (a).)

In June 2012, appellant admitted the allegations of both petitions. They were found true. The court placed appellant on community detention.

There followed a series of violations of the terms of appellant's community detention. Appellant was placed in increasingly restrictive settings, but failed to perform well in any of them.

In January 2014, an additional petition was filed, charging appellant with giving false information to a police officer (Pen. Code, § 148.9, subd. (a)), a misdemeanor. She admitted this petition and it, too, was sustained.

The court continued to attempt to find a placement at which appellant would succeed. In September 2014, the court ordered appellant placed in a program in Nevada. While appellant was awaiting approval of the out of state placement, the voters passed Prop 47. Among other things, Prop 47 created a new misdemeanor shoplifting offense. (Pen. Code, § 459.5.) The shoplifting misdemeanor carries a six-month term. (Pen. Code, § 19.) Prop 47 also created a process for persons currently serving felony sentences for what would have qualified as shoplifting, if the offense had then existed, to petition for resentencing of those offenses as misdemeanors. (Pen. Code, § 1170.18, subd. (b).)

In light of Prop 47, appellant sought recalculation of her maximum term of confinement. Specifically, she sought to have both her felony burglary and her misdemeanor petty theft offenses consolidated into a single shoplifting misdemeanor, with a maximum term of six months. The court declined to do so, but granted the partial relief of reducing the felony burglary to a misdemeanor burglary, which carried a one-year maximum term. (Pen. Code, § 461, subd. (b).)

With this modification, the court calculated appellant's maximum term of confinement as follows: one year for the burglary; two months for the petty theft (1/3 the six-month term); six months for the misdemeanor vandalism; and two months for the false information to a police officer (1/3 the six-month term). This was a total maximum term of confinement of one year, ten months.[1]

On appeal, appellant initially suggested that the court had erred by not combining her felony burglary and misdemeanor petty theft into a single shoplifting offense.

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[1] Although the form minute order for use in the juvenile court leaves a blank for the court to set forth its calculation of the maximum term of confinement, the minute orders in this case frequently omitted the calculation of maximum confinement. The result is that the parties do not have a clear understanding of the court's calculations, and errors are more difficult to spot. In fact, appellant is under the impression that the court imposed a six-month term for the burglary and a consecutive six-month term for the petty theft. The reporter's transcript indicates that the court imposed a combined one year, two month term for the burglary and petty theft together; as this is 14 months, it appears that appellant's presumed breakdown of the term is mistaken.

However, her argument focused more on whether Prop 47 applied to juveniles than on whether the retroactive relief contemplated by Prop 47 involved *reclassifying the offense* rather than *resentencing.* By the time the prosecution filed its respondent's brief, the issue of Prop 47's application to juveniles had been resolved; Prop 47 applies equally to juveniles. (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1216.) The prosecution's brief argued, however, that Prop 47 provided only for resentencing, not for reclassification of appellant's offenses.

We sought additional briefing on several issues regarding the court's calculation of the maximum term of confinement. We also requested appellant to brief the reclassification issue. In her letter brief, appellant conceded that she was entitled only to have the burglary resentenced as a misdemeanor, and not reclassified as a shoplifting.

DISCUSSION

Because Prop 47 applies to juveniles, the court was required, under Penal Code section 1170.18, to not simply reduce appellant's felony burglary to a misdemeanor burglary, but to resentence the burglary to the same sentence as shoplifting, i.e., a six-month maximum. The prosecution concedes the point.

In calculating appellant's maximum term of confinement, the court made other errors:

a. The maximum term for burglary is six months, but the maximum term for misdemeanor vandalism is one year. (Pen. Code, § 594, subd. (b)(2)(A).) Accordingly, the vandalism term is the primary term.

b. The consecutive term imposed for each additional misdemeanor should be one-third the maximum term for that misdemeanor.[2] (*In re Eric J.* (1979) 25 Cal.3d 522, 538; *In re Claude J.* (1990) 217 Cal.App.3d 760, 765.)

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[2] The Attorney General argues that the Supreme Court case, *In re Eric J.* (1979) 25 Cal.3d 522, was wrongly decided. She acknowledges, however, that we are bound to follow *Eric J.*

c. Because a consecutive term is imposed for burglary, any sentence for petty theft, arising out of the same act of shoplifting, must be stayed under Penal Code section 654.

In sum, appellant's maximum term of confinement should be calculated as follows: one year for the vandalism; two months for the burglary (1/3 the six-month term); sentence stayed for the petty theft; and two months for the false information to a police officer (1/3 the six-month term). This results in a total maximum term of confinement of one year, four months. The parties agree with the court's calculations.

DISPOSITION

Appellant's maximum term of confinement is modified to one year, four months. In all other respects, the court's order applying Prop 47 is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.