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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. CHARLES BATCHLEY, Defendant and Appellant.	2d Crim. No. B264245 (Super. Ct. No. 2012036023) (Ventura County)

Charles Batchley appeals an order denying his petition for resentencing under the Safe Neighborhoods and Schools Act ("Proposition 47" or "the Act"). (Pen. Code, § 1170.18.)[1] We conclude, among other things, that the trial court properly denied Batchley's Proposition 47 petition because of his prior juvenile adjudication (Welf. & Inst. Code, § 602) for committing a lewd or lascivious act on a child under the age of 14 (§ 288, subd. (a)). We affirm.

FACTS

In 2013, Batchley pled guilty to petty theft with priors (§ 666, subd. (a)), a felony, and resisting a peace officer (§ 148, subd. (a)), a misdemeanor. He was sentenced to three years of formal probation.

In 2015, Batchley's probation officer filed a "Notice of Charges" alleging that Batchley violated the terms of his probation. Batchley "moved for reclassification"

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

of his petty theft with priors felony. He requested that it be changed to a misdemeanor under Proposition 47.

The People opposed the request. They claimed Batchley was not eligible for Proposition 47 relief because he had a prior sustained juvenile petition (Welf. & Inst. Code, § 602) for committing a lewd or lascivious act on a child under 14 years of age (§ 288, subd. (a)). The probation report involving that offense reflected that, in 2009, Batchley, 17 years old, was a roommate with a 13-year-old boy at a summer camp. Batchley got into the child's bed and started "humping him." He masturbated "in front of the victim." Batchley grabbed the child's hand and "used [the child's hand] to masturbate himself." He then grabbed the child's penis and orally copulated him.

The People argued that under the Three Strikes law an "adjudication for a serious or violent felony committed when the minor was over the age of 16 can be used to increase the sentence." The prosecutor said, "Extending the rationale of the Three Strikes jurisprudence, the court should deny leniency under Proposition 47 with someone with such an adjudication."

The trial court ruled Batchley was "ineligible" for Proposition 47 relief.

DISCUSSION

Proposition 47

Batchley contends the trial court erred by denying his Proposition 47 petition for resentencing. He claims his prior juvenile adjudication for his section 288, subdivision (a) offense does not disqualify him for Proposition 47 relief. We disagree.

Batchley committed a serious prior sexual offense against a child who was under 14 years of age. Section 667, subdivision (d)(3) provides, "A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement if: (A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. (B) The prior offense is listed in subdivision (b) of section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a serious and/or violent felony. (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. (D) The juvenile was adjudged a ward of

the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions code." Batchley was 17 years old when he committed his prior sexual offense against the 13-year-old boy.

"When interpreting statutory provisions enacted by voter initiative or legislative action, our primary purpose is to ascertain and effectuate the intent of the enactors." (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1223-1224.) "To determine this intent, we consider the plain, commonsense meaning of the language used, and construe the language in the context of the overall enactment." (*Id.* at p. 1224.)

The Act "changed portions of the Penal Code and Health and Safety Code to reduce various drug possession and theft-related offenses from felonies (or wobblers) to misdemeanors, unless the offenses were committed *by certain ineligible offenders*." (*Alejandro N. v. Superior Court, supra*, 238 Cal.App.4th at p. 1222, italics added.)

The Act has an exclusion provision for such ineligible offenders. It provides, "The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290." (§ 1170.18, subd. (i).)

"Oral copulation with a child who is under 14 years of age" (§ 288, subd. (a)) falls within the category of prior offenses which precludes a defendant from obtaining Proposition 47 relief. (§§ 667, subd. (e)(2)(C)(iv)(II), 1170.18, subd. (i).)

Batchley contends the plain language of the Act's exclusion provision applies to adult offenders who have prior criminal convictions. He claims it cannot apply to defendants who have prior juvenile sustained petitions because they are not "convictions." But his assumption about the scope of the term conviction is too narrow. Courts have held that the term conviction may include juvenile adjudications. For example, "California's Three Strikes Law . . . increases the maximum sentence for an adult felony offense upon proof that the defendant has suffered one of more qualifying 'prior felony convictions' - *a term that specifically includes certain prior criminal*

adjudications sustained by the defendant, while a minor, under the juvenile court law." (*People v. Nguyen* (2009) 46 Cal.4th 1007, 1010, italics added.)

In *People v. Arias* (2015) 240 Cal.App.4th 161, an inmate serving a 26-years-to-life term filed a petition for resentencing under section 1170.126, subdivision (b) (Prop. 36). He had a prior juvenile adjudication for murder. (§ 187.) He claimed his juvenile adjudication was not a conviction, and consequently the trial court erred by considering it and ruling that he was not eligible for resentencing under section 1170.126. The Court of Appeal disagreed and affirmed. It held, "[A] juvenile adjudication that constitutes a conviction for purposes of sentencing under the three strikes law . . . also constitutes a conviction for purposes of determining eligibility for three strikes resentencing under section 1170.126, subdivision (e)." (*Arias*, at p. 165.) The goals of resentencing under section 1170.126 are achieved by granting relief to those who commit less serious offenses, but also by requiring "that murderers, rapists and child molesters serve their full sentences . . . ." (*Id.* at p. 168.) The absence of language in the resentencing law about juvenile adjudications did not mean they could not be used to exclude the defendant from eligibility for resentencing. (*Id.*, at pp. 168-169.)

The People claim Batchley is similar to the defendant in *People v. Arias*, and he falls directly within the express category of people who were not intended to benefit from Proposition 47. (§ 1170.18.) We agree.

Proposition 47 "set forth a list of purposes concerning the Act . . . ." (*Alejandro N. v. Superior Court, supra,* 238 Cal.App.4th at p. 1222.) One of those purposes was to "'ensure [] that sentences for people convicted of dangerous crimes like rape, murder, *and child molestation are not changed*.'" (*Ibid.*, italics added.) Batchley's offense falls within this exclusion. (*People v. Arias, supra*, 240 Cal.App.4th at pp. 168-169.)

In *Alejandro N.*, the court said, "Evaluating section 1170.18 in conjunction with the jurisdictional provision set forth in Welfare and Institutions Code section 602 for juvenile wardships, we conclude section 1170.18 was intended to apply to juvenile offenders." (*Alejandro N. v. Superior Court, supra,* 238 Cal.App.4th at p. 1224.)

Batchley points to the absence of language in the Act which expressly refers to juvenile proceedings. But this does not show an intent to exclude serious sexual offenses committed against children by juvenile offenders who were at least 16 years of age at the time of their offense. "Considered in its broader context, section 1170.18's use of adult criminal terminology does not reflect an intent to exclude juvenile offenders from its provisions." (*Alejandro N. v. Superior Court, supra*, 238 Cal.App.4th at p. 1225.) "Section 1170.18's use of terms associated with adult criminal proceedings logically comports with the fact that the Penal Code and other codes defining crimes define the offenses primarily for use in the adult context, and that these substantive criminal offense provisions are then engrafted onto the juvenile proceedings in wholesale fashion by means of Welfare and Institutions Code section 602." (*Ibid.*) "[S]ection 1170.18 concerns *the very same offenses* that are incorporated into juvenile wardship proceedings via Welfare and Institutions Code section 602, and it follows that section 1170.18's offense reclassification provisions are equally applicable to juvenile offenders." (*Id.* at p. 1217.)

Consequently, whether Batchley's section 288, subdivision (a) offense is referred to as a juvenile adjudication or a conviction does not change the underlying nature of the crime. The express purpose of the Act was to exclude those who committed this offense from obtaining Proposition 47 relief. (*Alejandro N. v. Superior Court, supra*, 238 Cal.App.4th at p. 1222; see also *People v. Arias, supra*, 240 Cal.App.4th at pp. 168-169.)

Apprendi

Batchley contends the "trial court's use of the juvenile petition . . . runs afoul of [*Apprendi v. New Jersey* (1998) 530 U.S. 466] because the court used a fact other than a conviction to increase appellant's punishment" without a jury trial.

The People contend that *Apprendi* does not apply because the denial of his petition "did not *increase* his sentence." (Italics added) We agree.

"Section 1170.18 is a 'remedial statute.'" (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 451.) "The question presented by [Batchley's] resentencing

petition was not whether to increase the punishment for his offense, but whether he was eligible for a potential reduction of his sentence." (*Ibid.*) "As a result, [Batchley] had 'no right to a jury determination of his eligibility for resentencing.'" (*Ibid.*)

We have reviewed Batchley's remaining contentions and conclude Batchley has not shown grounds for reversal.

The order denying his petition is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Patricia M. Murphy, Judge

Superior Court County of Ventura

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