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

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN DEMETRIUS WILLIAMS,

Defendant and Appellant.

B290706

(Los Angeles County
Super. Ct. No. BA465517)

APPEAL from a judgment of the Superior Court of Los Angeles County. Norman J. Shapiro, Judge. Reversed in part, remanded with directions.

Tasha G. Timbadia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Adrian Williams of assault and criminal threats. On appeal, he contends his convictions should be reversed to afford him a hearing under recently enacted Penal Code section 1001.36, which provides criminal defendants suffering from specified mental disorders an opportunity to enter a mental health diversion program in lieu of trial.¹ In support of this argument, Williams points to evidence in the record that he suffers from a serious mental illness. We hold that section 1001.36 applies retroactively to Williams's case and entitles him to a hearing to determine his eligibility for a mental health diversion program. On this ground, we conditionally reverse the judgment and remand the case to allow the trial court to conduct a diversion eligibility hearing.

FACTUAL AND PROCEDURAL BACKGROUND

On February 11, 2018, Jorge Guevera was working at a Shell gas station when Williams entered the store and started heating up food in the microwave. Guevera told Williams he could not use the microwave, but Williams continued to do so. Guevera unplugged the microwave, after which Williams threw the microwave on the floor. Williams then grabbed Guevera in a chokehold, and yelled that he was going to stab Guevera. Williams cut Guevera in the back of the head with a razor blade, inflicting a 3-inch laceration. Guevera punched Williams in the face, and Williams left the store. Williams was soon after apprehended by the police.

A jury convicted Williams of aggravated assault (§ 245, subd. (a)(1); count 1) and criminal threats (§ 422, subd. (a); count 2). The jury found true the allegations that as to count 1, Williams inflicted great bodily injury (§ 12022.7, subd. (a)), and

¹ All further statutory references are to the Penal Code.

as to count 2, he used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). On June 6, 2018, the trial court sentenced Williams to four years in state prison on count 1 plus a consecutive term of three years for the great bodily injury enhancement. The court stayed the sentence on count 2. Williams timely appealed. Later that month, the Legislature enacted section 1001.36 providing for pretrial diversion for certain defendants who qualify to receive mental health treatment in lieu of prosecution.

DISCUSSION

Williams contends that he is entitled to a pretrial hearing on diversion under recently enacted section 1001.36 because the Legislature intended the statute to apply to cases pending on appeal. As Williams notes, the record shows that the Los Angeles Consolidated Criminal History System labeled him as “mentally disturbed,” and the probation report noted that the victim, who was familiar with Williams, believed Williams had “mental problems.” Respondent counters that the language of subdivision (c) of section 1001.36 demonstrates that the Legislature intended the enactment to operate prospectively only, i.e., the enactment would not apply to cases such as this one in which there has already been an adjudication.

This issue has been addressed by the recent case of *People v. Frahs* (2018) 27 Cal.App.5th 784 (*Frahs*) which held that section 1001.36 applies retroactively.² Our Supreme Court, in turn, has granted review of *Frahs*, and will have the final say on

² Cal. Rules of Court, rule 8.1115(e)(1) [“Pending review and filing of the Supreme Court’s opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only.”].)

the matter. (*People v. Frahs* (Dec. 27, 2018, S252220).) For now, we agree with *Frahs* that section 1001.36 applies retroactively.

As in *Frahs*, Williams's case is not yet final on appeal and the record affirmatively discloses that he appears to meet at least one of the threshold requirements. We will therefore remand to allow the trial court to determine whether Williams should benefit from diversion under section 1001.36. (*Frahs, supra*, 27 Cal.App.5th at p. 791.)

DISPOSITION

The judgment is conditionally reversed and the matter is remanded to the trial court with directions to conduct a diversion eligibility hearing under section 1001.36 within 90 days from the remittitur. If the trial court determines that Williams is not eligible for diversion, then the court shall reinstate the judgment.

If the trial court determines that Williams is eligible for diversion but, in exercising its discretion, the court further determines diversion is not appropriate under the circumstances, then the court shall reinstate the judgment.

If the trial court determines that Williams is eligible for diversion and, in exercising its discretion, the court further determines diversion is appropriate under the circumstances, then the court may grant diversion. If Williams successfully completes diversion, the court shall dismiss the charges in accordance with section 1001.36, subdivision (e). If, however,

Williams does not successfully complete diversion, the trial court shall reinstate the judgment.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.