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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.

EUGENE CARDELL
HARGROVE,

Defendant and Appellant.

2d Crim. No. B292732
(Super. Ct. No. NA109616)
(Los Angeles County)

Eugene Cardell Hargrove appeals after conviction by plea to assault with a deadly weapon (knife) in violation of Penal Code¹ section 245, subdivision (a)(1). He seeks a remand for a hearing on whether he is entitled to diversion for a mental health disorder. (§ 1001.36.) We affirm because he failed to raise this issue in the trial court.

¹ All further statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL HISTORY

Hargrove was riding on a Metro train when he noticed D.D. looking at him. He “approached [D.D.] in an angry and aggressive manner.” He demanded to know what D.D. was looking at, and punched him in the chest. He “swung both left and right closed fists approximately 10 times.” D.D. pushed him away.

Hargrove removed a knife from his pocket and swung it at D.D. approximately five times, cutting his upraised arm. When the train stopped, Hargrove fled on foot. He was apprehended later that day.

On August 1, 2018, Hargrove was charged with two felonies: assault with a deadly weapon (knife) (§ 245, subd. (a)(1); count 1) and assault by means likely to cause great bodily injury (§ 245, subd. (a)(4); count 2). On September 12, 2018, he pled no contest to count 1. He was sentenced that same day to three years formal probation, including 75 days credit for time served, and various fines and fees.

DISCUSSION

Hargrove claims that newly enacted section 1001.36 applies to him. He requests that we remand his case to the trial court with directions to exercise its discretion on whether to grant him diversion for mental health treatment. We decline to do so because Hargrove forfeited this claim by failing to raise it below.

The Legislature enacted section 1001.36 effective June 27, 2018. That statute created a diversion program for defendants with mental disorders. If a trial court determines that a defendant meets six criteria, and that mental health treatment will meet the defendant’s needs, it has discretion (but

is not required) to grant diversion and order the defendant to undergo treatment for up to two years. If the defendant succeeds, the charges may be dismissed.

Section 1001.36 was effective when Hargrove committed his crime and before the felony complaint against him was filed. He did not seek relief under that statute in the trial court. Instead, he pled no contest to assault with a deadly weapon and was sentenced accordingly.

It is well-settled that “forfeiture results from the failure to invoke a right.” (*People v. Romero* (2008) 44 Cal.4th 386, 411; *In re Sheena K.* (2007) 40 Cal.4th 875, 880-881.) Because Hargrove had the right to request relief from the trial court pursuant to section 1001.36, his failure to do so forfeits the issue. (*People v. Carmony* (2004) 33 Cal.4th 367, 375-376 [failure to seek dismissal pursuant to section 1385 forfeits right to raise issue for first time on appeal].)

Hargrove claims that he is entitled to raise the issue for the first time on appeal, because case law holds “that section 1001.36 retroactively applies to all cases not finalized.” (See *People v. Frahs* (2018) 27 Cal.App.5th 784, review granted Dec. 27, 2018, S252220.) While correct on the law, Hargrove fails to recognize that the retroactivity of section 1001.36 is irrelevant to his case. Because that statute was effective before he was charged with a crime, there is no need or purpose to determine whether the statute applies to him. Hargrove had an existing right to request relief under this statute in the trial court. He did not do so. As a result, his claim is forfeited.

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gary J. Ferrari, Judge

Superior Court County of Los Angeles

Jared G. Coleman, under appointment by the Court
of Appeal, for Defendant and Appellant.

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