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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.

MARLIN MARTIN,

Defendant and Appellant.

2d Crim. No. B285231
(Super. Ct. No. MA054232-01)
(Los Angeles County)

Marlin Martin appeals an order denying him a transfer hearing pursuant to Proposition 57, the “Public Safety and Rehabilitation Act of 2016.” (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303-304 [Proposition 57 applies to all juveniles charged directly in adult court whose judgment was not final at the time of enactment].) We conditionally reverse and remand for proceedings consistent with this opinion. (*Lara*, at p. 310, *People v. Vela* (2018) 21 Cal.App.5th 1099, 1102.)

FACTUAL AND PROCEDURAL HISTORY

On May 23, 2012, Martin was convicted of two counts of attempted premeditated and deliberate murder, first degree residential robbery, escape, and first degree burglary, with

findings of personal firearm use and firearm use causing great bodily injury. (§§ 664, 187, subd. (a), 211, 4532, subd. (b)(1), 459, 12022.53, subds. (b)-(d).)¹ Martin, then 17 years old, committed the crimes in 2011, when he unlawfully entered a home, robbed the residents therein at gunpoint, and discharged a firearm causing great bodily injury. His conviction was by jury trial following a direct filing in adult court by the prosecutor. (Welf. & Inst. Code, former § 707, subd. (d).)

The trial court sentenced Martin to a life term with the possibility of parole, plus 25 years to life for the firearm enhancement for the first count of attempted murder; and a consecutive life term with the possibility of parole, plus 20 years to life for the firearm enhancement for the second count of attempted murder. The court imposed but stayed concurrent terms for the remaining counts, imposed but stayed sentence regarding other firearm enhancements, imposed various fines and fees, and awarded Martin 315 days of presentence custody credit.

Martin appealed and we affirmed. We concluded that his sentence was constitutional because it was not the functional equivalent of life without parole in light of newly enacted section 3051. (*People v. Martin* (2013) 222 Cal.App.4th 98.) Martin then appealed to our Supreme Court which granted his petition for review on March 26, 2014 (S216139). On August 17, 2016, the Supreme Court transferred the case to us with directions to vacate our decision and consider the matter in light of *People v. Franklin* (2016) 63 Cal.4th 261, 268-269, 283-284.

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

On January 17, 2017, we filed our opinion as ordered by the Supreme Court. We remanded the matter to the trial court “to provide the parties the opportunity to make an accurate record of Martin’s youth-related characteristics and circumstances at the time of his offenses so that an adequate record exists when his youth-offender parole hearing occurs.” (*People v. Martin* (Jan. 17, 2017, B242447) [nonpub. opn.].)

Prior to the filing of our opinion, the electorate passed Proposition 57, effective November 9, 2016. (*People v. Superior Court (Lara)*, *supra*, 4 Cal.5th 299, 304.) Proposition 57 prohibits prosecutors from directly charging juveniles with crimes in adult court. Instead, prosecutors must commence the action in juvenile court. “If the prosecution wishes to try the juvenile as an adult, the juvenile court must conduct . . . a ‘transfer hearing’ to determine whether the matter should remain in juvenile court or be transferred to adult court.” (*Id.* at p. 303.)

Following our *Franklin* remand to the trial court, Martin filed a motion for a transfer hearing pursuant to Proposition 57. The People opposed the motion. After written and oral argument by the parties, the trial court denied the motion, stating that our remand was for the limited purpose of holding a *Franklin* hearing and that otherwise the matter was “post-conviction, post-judgment, and, thus, final.”

Martin appeals and contends that the trial judge erred by denying him a Proposition 57 transfer hearing. The Attorney General concedes. (*Part I, post.*)

During the pendency of this appeal, Senate Bill No. 620 became effective. The bill amended section 12022.53 to provide discretion to the trial court to strike a firearm enhancement in the interest of justice. (§ 12022.53, subd. (h), as amended by

Stats. 2017, ch. 682, § 2 [“The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section”].) Accordingly, we requested the parties to file supplemental letter briefs discussing the application of the amendment to Martin’s sentence in this case. (*Part II, post.*)

DISCUSSION

I.

Martin argues Proposition 57 applies to him because his case was not yet final when Proposition 57 became effective, November 9, 2016.

Our Supreme Court recently decided that Proposition 57 applies retroactively to all juveniles charged directly in adult court whose judgment was not final at the time Proposition 57 was enacted by the electorate. (*People v. Superior Court (Lara)*, *supra*, 4 Cal.5th 299, 303-304.) “The key date is the date of final judgment.” (*People v. Vieira* (2005) 35 Cal.4th 264, 305.) For purposes of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 935; *Vieira*, at p. 306.) Here our Supreme Court transferred the matter to us for reconsideration on August 16, 2017; 90 days to petition for writ of certiorari would expire on November 15, 2016, six days after the effective date of Proposition 57. (U.S. Supreme Ct. Rules, rule 13(1).) Thus, Proposition 57 retroactively applies to Martin, and he is entitled to a transfer hearing.

II.

We agree with the parties that section 12022.53, subdivision (h) applies retroactively to Martin’s resentencing in

criminal court. Accordingly, if Martin's conviction is reinstated, the court shall consider whether to exercise its discretion to strike the section 12022.53 firearm enhancements. (*People v. Vela, supra*, 21 Cal.App.5th 1099, 1114.)

Disposition

The juvenile court shall conduct a transfer hearing. If, after conducting the hearing, the juvenile court determines that Martin's case should be transferred to a court of criminal jurisdiction, then his case shall be transferred and his convictions reinstated. The criminal court shall then resentence Martin and consider whether to exercise its discretion pursuant to section 12022.53, subdivision (h). We express no opinion on the matter. (*People v. Vela, supra*, 21 Cal.App.5th 1099, 1102.)

If the juvenile court determines, however, that Martin is amenable to rehabilitation, and should remain within the juvenile justice system, then his convictions will be deemed juvenile adjudications. The juvenile court is then to impose an appropriate disposition within its discretion pursuant to the juvenile court law. (*People v. Vela, supra*, 21 Cal.App.5th 1099, 1102.)

The judgment is conditionally reversed and the matter remanded for proceedings consistent with this opinion.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Andrew E. Cooper, Judge

Superior Court County of Los Angeles

Paul Stubb, Jr., 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, Senior Assistant Attorney General, David E. Madeo, Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.