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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL GEORGE MAVROUDIS,

Defendant and Appellant.

A142873

(San Mateo County Super. Ct.
Nos. SC04483A, CV526510A)

In 1999, Michael George Mavroudis entered a plea of no contest to a single charge of committing lewd conduct on a child under 14 years of age (Pen. Code, § 288, subd. (a)), which he admitted was a serious felony (*id.*, § 1192.7, subd. (c)(6)). Imposition of sentence was suspended, whereupon Mavroudis was admitted to probation for three years.

In March 2014, a dozen years after successfully completing his probation, Mavroudis petitioned for a certificate of rehabilitation as authorized by Penal Code sections 4852.01 and 4852.06.

In July of that year, the District Attorney of San Mateo County filed written opposition to the petition. He urged denial on two grounds. The first was statutory: the plain language of subdivision (d) of Penal Code section 4852.01 precluded applications by persons convicted of violating Penal Code section 288. The District Attorney did acknowledge that a recent Court of Appeal had invalidated the basis for this ground (*People v. Tirey* (2014) 225 Cal.App.4th 1150, review granted August 2014, S219050),

and although the Legislature was in the process of amending subdivision (d) to restore the statutory prohibition, at present “the *Tirey* decision means that until AB 1468 [*sic*: 1438] is actually enacted, . . . [¶] . . . any court considering a PC § 288(a) defendant’s Petition . . . *right now* is bound by *Tirey* and must at least *consider* the merits of a 288(a) defendant’s petition.” The District Attorney repeatedly emphasized that the effect of granting the petition would be to relieve Mavroudis of the lifetime obligation to register as a sex offender under Penal Code sections 290 and 290.5, subdivision (a).

The second ground for the District Attorney’s opposition was fact-specific to Mavroudis’s state of mind and explanation of the offense. According to the District Attorney, during a January 2014 interview with “DA Inspector Robinson . . . , defendant was less than completely candid and once again put all the blame for the contact on his 11 year old niece. Moreover, the representation that upon being accused he ‘immediately admitted’ to what he did is simply not true in that during his *first* interview with the police, he never admitted to any sexual contact at all and even expressed surprise that someone could perceive anything inappropriate in his conduct with his niece. The defendant failed to disclose that he had only admitted to any conduct at all after being confronted with his admissions to his sister-in-law during a . . . phone call. [¶] Mr. Mavroudis does not indicate in his letter [attached to his petition] to the court . . . any insight or understanding into why he committed the crimes against his niece (except to repetitively say he was upset about his mother’s death). . . . [¶] . . . [A]ll he did was minimize his conduct and blame his niece for coming onto him.” “Based on the defendant’s lack of candor and insight into his sexual offense, the People suggest that granting the [petition] would be a grave disservice to the People of California.”

A brief hearing on the petition was held on August 14, 2014. The trial court opened by stating: “I have a general recollection of the overall situation . . . I think the defendant pled to something significant . . . [¶] [a]nd the victim was fairly young. [¶] . . . And the defendant pled to a 288 (A) with the admission of a serious felony on September 3rd, 1999.” The court then verified with the District Attorney that “the People are opposed to the . . . petition . . . [¶] [b]ased on the nature of the underlying offense,”

and that “a Certificate of Rehabilitation [would] relieve the defendant of that lifetime [sexual offender registration] obligation.” The District Attorney reiterated that Mavroudis “minimized his conduct, indicated he didn’t believe certain things.” The court then denied the petition, stating that “these offenses, particularly involving young victims . . . are concerning to the Court . . . so that no other child is victimized.”

The undoubted fact that the underlying conviction was for a “serious” offense does not assist our analysis. The nature of the offense is immutable. (See *In re Lawrence* (2008) 44 Cal.4th 1181, 1221, 1226–1227.) A horrible offense will always remain a horrible offense, yet its nature cannot be dispositive unless the Legislature has codified a categorical exclusion. Such an exclusion is not present here. Although, during the pendency of this appeal the Legislature did pass Assembly Bill 1438, it did not state that it was retroactive, and the Attorney General does not argue that the restored prohibition to all persons convicted of violating Penal Code section 288 is a basis on which the order denying Mavroudis’s petition may be affirmed.

The Attorney General acknowledged at oral argument that the trial court did not adopt the District Attorney’s argument that Mavroudis was “minimizing” his responsibility. The record on appeal cannot establish whether Mavroudis’s version had altered between 1999 and 2014, or, if so, in what particulars. In any event, a constant has been his accepting responsibility for admitted wrongdoing. He is not barred from relief because his memory of every detail is not a perfect copy of the District Attorney’s “official version of the crime.” (*In re Sanchez* (2012) 209 Cal.App.4th 962, 972.) This court has repeatedly so held in the related area of inmate parole. (*In re Young* (2012) 204 Cal.App.4th 288, 315–316; *In re Juarez* (2010) 182 Cal.App.4th 1316, 1340–1342; *In re Moses* (2010) 182 Cal.App.4th 1279, 1310.)

Mavroudis’s petition was confided to the trial court’s discretion. (*People v. Blocker* (2011) 190 Cal.App.4th 438, 444.) But the only ground used by the trial court to deny the petition—that the underlying offense was “serious”—was founded on an error of law. “[A]pplying an incorrect legal standard . . . is accepted as proof of discretion abused.” (*Karuk Tribe of Northern California v. California Regional Water Quality*

Control Bd., North Coast Region (2010) 183 Cal.App.4th 330, 363, fn. 25.) The record discloses no other basis for concluding that Mavroudis’s petition otherwise failed to satisfy the statutory criteria: (1) he “has not been incarcerated in a state prison or other state penal institution or agency since his . . . release” (Pen. Code, § 4852.01, subd. (a)); (2) he “present[ed] satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition” (*id.*); and (3) he showed that he had since his discharge from probation “live[d] an honest and upright life, . . . conduct[ed] himself . . . with sobriety and industry, . . . exhibit[ed] a good moral character, and . . . conform[ed] to the and obey[ed] the laws of the land.” (*Id.*, § 4852.05.)

The order is reversed and the cause is remanded with directions to grant the petition.

Richman, J.

We concur:

Kline, P.J.

Miller, J.