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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re T.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.W.,

Defendant and Appellant.

A145496

(Contra Costa County
Super. Ct. No. J12-00850)

MEMORANDUM OPINION¹

T.W. (minor) was originally made a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 in July 2010. In July 2013, a supplemental petition was filed alleging he had committed robbery (Pen. Code,² § 211) and receiving stolen property (§ 496), both of which were felonies at the time. The minor admitted a violation of section 496, and the robbery allegation was dismissed on motion of the district attorney.

In November 2014, the minor filed a petition seeking a reduction of the maximum term of his confinement pursuant to section 1170.18, which had been enacted a few days earlier by the passage of Proposition 47. (Cal. Const., art. II, § 10, subd. (a); see *People*

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3).

² All further statutory references are to the Penal Code.

v. Lynall (2015) 233 Cal.App.4th 1102, 1108.) Among other changes to California criminal law, Proposition 47 reduced several crimes from felonies to misdemeanors, including a violation of section 496 if the value of the stolen property was less than \$950. Under section 1170.18, any person “currently serving a sentence” for one of the crimes reduced from a felony to a misdemeanor by Proposition 47 is permitted to petition for a recall of sentence. (§ 1170.18, subd. (a).) Upon receipt of such a petition, the trial court must reduce the defendant’s conviction to a misdemeanor and resentence him or her under the amended statute, unless the court determines the change would pose an unreasonable risk to public safety. (§ 1170.18, subd. (b).)

In his petition, the minor argued the value of the stolen property underlying his admission was less than \$950, entitling him to a reduction in his maximum term of confinement to 12 months. On May 21, 2015, the juvenile court entered an order granting the petition, reducing the minor’s violation to a misdemeanor, terminating his probation, and vacating the wardship.³ At a final hearing on June 11, the minor’s counsel requested, in addition, expungement of the record of the minor’s DNA sample from the state databank, arguing the minor would not have been required to provide a sample had he originally been found to have committed a misdemeanor. The juvenile court denied the request.

After the court’s denial of the minor’s request for expungement, on October 4, 2015, the Governor signed Assembly Bill No. 1492 (2015–2016 Reg. Sess.) (hereafter Bill No. 1492). (Stats. 2015, ch. 487.) Among other things, Bill No. 1492 amended section 299, which governs the expungement of DNA samples, by inserting a reference to section 1170.18 into a list of statutes that do *not* authorize a judge to relieve a person of the duty to provide a DNA sample.

³ The juvenile court had initially denied the petition, finding section 1170.18 inapplicable to sentences set by negotiated plea, but we granted a peremptory writ of mandate directing the court to vacate its order denying the petition. (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 653.)

The minor has appealed the denial of his request for expungement. The issues he raises are identical to those addressed in our recent decision, *In re J.C.* (2016) 246 Cal.App.4th 1462 (*J.C.*), in which we concluded that a similarly situated minor was not entitled to expungement of the record of her DNA sample following redesignation of her felony violation to a misdemeanor pursuant to Proposition 47. As we explained in *J.C.*, the amendment of section 299, subdivision (f) by Bill No. 1492 was clearly intended to preclude courts from expunging the record of a defendant's DNA sample when the defendant's conviction was redesignated under section 1170.18. (*J.C.*, at pp. 1472–1475.) Although the passage of Bill No. 1492 occurred well after the *J.C.* minor's violation and redesignation, as here, we concluded application of the bill was appropriate. Because Proposition 47 was ambiguous with respect to expungement, the amendment of section 299 by Bill No. 1492 clarified, rather than changed, the law. For that reason, application of the amendment to the minor's redesignation did not constitute a “retroactive” application. (*J.C.*, at pp. 1478–1480.)

The appellants' briefs in this case and *J.C.* are materially identical, and the minor has not raised any issues that are not adequately addressed in *J.C.* Accordingly, we affirm the trial court's order denying the minor's request for expungement on the basis of that decision.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.

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In re T.W.