

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,
Plaintiff and Respondent,

v.

T.D.,
Defendant and Appellant.

A146127

(Contra Costa County
Super. Ct. No. J14-00211)

MEMORANDUM OPINION¹

Minor T.D. was made a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 on March 18, 2014. The minor was originally charged with robbery and the use of a knife (Pen. Code,² §§ 211, 12022, subd. (b)), but the juvenile court granted the prosecutor's motion to amend the petition to allege felony grand theft (§ 487, subd. (c)) instead. The minor admitted the amended charge and the court dismissed the weapon use allegation. The court ordered the case transferred to Contra Costa County for disposition.

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.

On June 5, 2015, the minor filed a petition in Contra Costa County to redesignate her felony grand theft adjudication a misdemeanor, recalculate her maximum term of confinement to six months, reduce the fine, and expunge her DNA sample from the state’s DNA database pursuant to Proposition 47.³ Among other changes to California criminal law, Proposition 47 reduced several crimes from felonies to misdemeanors, including a violation of section 487 if the value of the stolen property does not exceed \$950. (§ 490.2.)

In her petition, the minor argued the value of the stolen property underlying her admission was less than \$950, entitling her to a reduction in her maximum term of confinement to six months. On June 30, 2015, the juvenile court entered an order granting the petition in part and denying it in part. The court reduced the minor’s adjudication from a felony to a misdemeanor, recalculated her maximum confinement time, and reduced her fine, but declined to order expungement of her DNA sample. On August 25, 2014, the court denied the minor’s motion to reconsider denial of her expungement request. Minor timely appeals the denial of her request for expungement.

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, p. 4251.) In our recent decision of *In re J.C.* (2016) 246 Cal.App.4th 1462 (*J.C.*), we held Bill No. 1492 “prohibits the granting of a request for expungement in connection with a petition for recall of sentence under

³ Proposition 47, enacted by the voters on November 4, 2014, added section 490.2, among others, to the Penal Code. These statutes “make[] certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) “Proposition 47 also created a new resentencing provision—section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition to recall that sentence and request resentencing.” (*Id.* at p. 1109.)

Proposition 47. Because Bill No. 1492 clarifies, rather than changes, the meaning of the relevant provisions of Proposition 47, the bill precludes the granting of requests for expungement made prior to its enactment.” (*J.C.*, at pp. 1467–1468.) Accordingly, we concluded the minor there was not entitled to have the record of her DNA sample expunged following redesignation of her felony adjudication to a misdemeanor pursuant to Proposition 47. (*J.C.*, at p. 1467.)

The issues raised here are identical to those addressed in *J.C.*⁴ In that case we examined Bill No. 1492, which amended section 299, subdivision (f), the statute governing the expungement of DNA samples. As we explained in *J.C.*, by inserting section 1170.18 into the list of statutes that do *not* authorize a judge to relieve a person of the duty to provide a DNA sample, the Legislature intended to prohibit trial courts, when reducing or dismissing charges pursuant to the listed statutes, from also expunging the DNA record given in connection with the original felony conviction. (*J.C.*, *supra*, 246 Cal.App.4th at pp. 1473–1474.) Section 1170.18, added by Proposition 47, provides the authority and framework for a petition to recall a sentence and redesignate an offense from a felony to a misdemeanor.

In *J.C.* we also concluded application of Bill No. 1492 to the minor there, whose offense, adjudication, and redesignation of the offense from felony to misdemeanor occurred prior to the passage of the bill, did not operate retroactively because the amendment of section 299 by Bill No. 1492 clarified, rather than changed, Proposition 47. (*J.C.*, *supra*, 246 Cal.App.4th at pp. 1478–1480, 1482.)

A comparison of the briefs in this case and in *J.C.*, *supra*, 246 Cal.App.4th 1462, persuades us that the minor here has not raised any issues or arguments that are not

⁴ In both *J.C.*, *supra*, 246 Cal.App.4th 1462, and the current case, the Juvenile Court for Contra Costa County incorporated the arguments and ruling from *In re S.B.* (Super. Ct. Contra Costa County, 2015, No. J13-01068), decided by that court on June 4, 2015.

adequately addressed in *J.C.* For the reasons stated in *J.C.*, we find the amendment to section 299, subdivision (f) by Bill No. 1492 signaled a legislative intent to prohibit trial courts from expunging DNA samples when they recall a sentence and redesignate a felony as a misdemeanor under Proposition 47. For the reasons stated in *J.C.*, we also find that applying Bill No. 1492 to the minor's case is not a retroactive application of the law because Bill No. 1492 clarified but did not change Proposition 47. Accordingly, we affirm the trial court's order denying her request for expungement on the basis of our decision in *J.C.*

DISPOSITION

The judgment is affirmed

Dondero, J.

We concur:

Margulies, Acting P.J.

Banke, J.