Filed 9/6/16 In re T.M. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

In re T.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. T.M., Defendant and Appellant.	A146216 (Contra Costa County Super. Ct. No. J1400711, JW-14-6168)

As in a recently decided related case, *In re C.B.* (Aug. 30, 2016, A146277) __ Cal.App.4th __ [2016 Cal.App. Lexis 725], the appellant in this case, T.M. (minor), appeals from a juvenile court order denying his request to expunge DNA samples from the state's DNA database after his felony offense was redesignated a misdemeanor pursuant to Proposition 47, the Safe Neighborhoods and Schools Act, a measure that reduced the classification of certain crimes. According to minor, his DNA samples should be expunged because, had his offense been classified as a misdemeanor at the time he admitted committing it, he would not have been required to submit the samples in the first place. Following the same legal reasoning applied by this court in *In re C.B.*, we reject minor's challenge and affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2014, an amended petition was filed in San Francisco County Juvenile Court pursuant to Welfare and Institutions Code section 602, alleging that minor committed felony grand theft from the person of another in violation of Penal Code section 487, subdivision (c).[1] Following minor's admission of the allegation in the petition, the matter was transferred to Contra Costa County, where minor's mother resided, for disposition.[2]

On August 26, 2014, the juvenile court adjudged minor a ward of the court and placed him on probation, subject to electronic monitoring for 120 days.

On June 23, 2015, minor filed a petition for relief under section 1170.18 requesting that his felony grand theft adjudication be redesignated as a misdemeanor, that the maximum term of his confinement be recalculated, and that his DNA samples be expunged from the state database.

On July 14, 2015, following a contested hearing, the juvenile court granted minor's requests to redesignate his offense as a misdemeanor and to reduce the maximum term of his confinement to six months, but denied his request to expunge DNA samples. On September 11, 2015, after his probation had been terminated successfully, his wardship vacated and his court records sealed, minor filed a timely notice of appeal.[3]

DISCUSSION

Minor raises a single issue on appeal: Did the juvenile court misconstrue Proposition 47 when finding he was not entitled to have his DNA samples expunged from the state's database after reclassifying his felony offense as a misdemeanor?[4]

---

[1] Unless otherwise stated, all statutory citations herein are to the Penal Code.

[2] The underlying facts of minor's offense are not relevant to this appeal and, as such, have been omitted.

[3] Pursuant to the juvenile court's order, minor's arrest on the underlying offense was deemed not to have occurred.

[4] We grant minor's request for judicial notice of the briefing, argument and the juvenile court's ruling in *In re S.B,* A145488, which documents were referenced and

The standard of review is not in dispute: Questions regarding the proper interpretation of a voter initiative, like those of statutory interpretation, are reviewed on appeal de novo. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212 [rules of statutory interpretation apply to voter initiatives]; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1176.) The fundamental rule of statutory construction or voter-initiative construction is that we must ascertain the intent of the drafters so as to effectuate the purpose of the law. (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213.) "To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning. [Citations.]" (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) "We do not, however, consider the statutory language in isolation; rather, we look to the entire substance of the statutes in order to determine their scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statutes' nature and obvious purposes. [Citation.] We must harmonize the various parts of the enactments by considering them in the context of the statutory frame work as a whole. [Citation.] If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history." (*People v. Cole* (2006) 38 Cal.4th 964, 975.)

In this case, minor contends proper interpretation of Proposition 47 requires trial courts to expunge DNA samples submitted by criminal defendants (including juveniles) once their offenses are reclassified from felony to misdemeanor pursuant to section 1170.18. Relying on a recent decision from the Court of Appeal, Fourth District, *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (pet. for rev. denied, Oct. 14, 2015) (*Alejandro N.*), minor reasons that the juvenile court erred by denying his request to expunge his DNA record because, once his crime was reclassified as a misdemeanor, it was no longer a "qualifying offense" for purposes of the administrative

---

relied upon by the lower court in reaching the challenged order. (Evidence Code, § 452, subd. (d).)

duty to submit DNA under the DNA and Forensic Identification Data Base and Data Bank Act of 1998, section 295 et seq. (hereinafter, DNA Database Act). (See § 296, subd. (a).)

We recently addressed and rejected this precise argument in *In re C.B.* (Aug. 30, 2016, A146277) __ Cal.App.4th __ [2016 Cal.App. Lexis 725]. In doing so, we concluded a felony offense reclassified as a misdemeanor under section 1170.18 should only be treated as a misdemeanor *going forward* from the time of reclassification and, thus, remains a qualifying offense for purposes of the DNA Database Act, precluding the offender from obtaining additional relief under section 1170.18 in the form of expungement. Applying the legal reasoning fully set forth in *In re C.B.*, we reach the same conclusion herein and, thus, reject minor's challenge.

DISPOSITION

The juvenile court order denying minor's petition to order the expungement of his DNA samples is affirmed.

_____
Jenkins, J.

I concur:

_____
McGuiness, P. J.

In re T.M., A146216

POLLAK, J., — I dissent for the reasons stated in my dissent in *In re C.B.* (Aug. 30, 2016, A146277) __ Cal.App.4th __ [2016 Cal.App. Lexis 725].

_____
Pollak, J.

In re T.M., A146216