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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD SALTER, JR.,

Defendant and Appellant.

C069935

(Super. Ct. No. SF107670A)

On August 25, 2008, defendant Donald Salter, Jr., pleaded guilty to three counts of second degree burglary. (Pen. Code, § 459.)¹ On December 1, 2008, the trial court suspended imposition of sentence and placed defendant on five years' formal probation with a 360-day jail term.

On July 27, 2009, the trial court found defendant violated his probation and imposed a two-year state prison term. The court suspended execution of the sentence and reinstated probation with a 60-day jail term.

¹ Undesignated statutory references are to the Penal Code.

On November 29, 2011, defendant admitted violating probation and the trial court executed the suspended two-year prison term.

On appeal, defendant contends that the prospective application of the Criminal Justice Realignment Act of 2011 (Realignment Act; Stats. 2011, ch. 15) violates his right to equal protection of the law. We affirm.

DISCUSSION

The facts of defendant's crime are unnecessary to resolve this appeal.

Under the Realignment Act, felons are confined to county jail instead of state prison unless they have a current or prior serious or violent felony conviction, or are required to register as a sex offender, or are subject to the aggravated white collar crime enhancement. (§ 1170, subd. (h)(1)-(3).)

The Realignment Act would apply to defendant but for the date of his sentencing. "The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011." (§ 1170, subd. (h)(6).)

Defendant argues that the prospective application of the Realignment Act violates his equal protection rights. He claims the Realignment Act does not reduce punishment, but instead confers a liberty interest that must be extended to all similarly situated individuals absent a compelling state interest. Claiming that no compelling state interest supports prospective application, defendant concludes that the judgment should be reversed and he should be resentenced under the Realignment Act.

Felons sentenced under the Realignment Act are committed to county jail instead of state prison (§ 1170, subd. (h)(1)-(2)), may have a concluding portion of their sentences suspended in lieu of probation (§ 1170, subd. (h)(5)), and are not subject to parole (§ 3000 et seq.). This constitutes a reduction in punishment for the affected crimes.

A criminal defendant does not have a fundamental liberty interest in the retroactive application of a statute reducing the punishment for a crime. (*Baker v. Superior Court* (1984) 35 Cal.3d 663, 668-669.) A defendant's right to equal protection of the law does not prevent the Legislature from determining that a change in the law reducing the punishment for a crime shall be applied on or after a specified date. (*People v. Floyd* (2003) 31 Cal.4th 179, 188; *In re Kapperman* (1974) 11 Cal.3d 542, 546.)

We held that prospective application of the Realignment Act did not violate a defendant's equal protection rights in *People v. Lynch* (2012) 209 Cal.App.4th 353, 362. We reject defendant's contention for the reasons stated herein and in our opinion in *Lynch*.

DISPOSITION

The judgment is affirmed.

_____ RAYE _____, P. J.

We concur:

_____ MURRAY _____, J.

_____ HOCH _____, J.