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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. ARTURO GOMEZ, Defendant and Appellant.	C070159 (Super. Ct. No. CRF10535710)

Defendant Arturo Gomez pleaded no contest to receipt of a stolen vehicle and transportation of methamphetamine. The trial court sentenced him to a stipulated four-year prison term and granted a certificate of probable cause.

Defendant contends he should have been sentenced to jail rather than prison because prospective application of the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15) violated his federal and state equal protection rights.

But defendant was sentenced in this case *after* the effective date of the Realignment Act. There is no issue regarding prospective or retroactive application of the law. Instead, defendant stipulated to the prison sentence as part of his plea agreement, and the prison sentence was authorized by Penal Code section 1170.1, subdivision (a), because defendant was already sentenced to prison in a prior case.

We will affirm the judgment.

BACKGROUND

A recitation of the underlying facts is unnecessary given defendant's contention on appeal. Defendant pleaded no contest to receipt of a stolen vehicle (Pen. Code, § 496d, subd. (a))[1] and transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)). The trial court sentenced him to a stipulated four-year prison term consisting of a two-year term for the principle offense of receipt of a stolen vehicle, a consecutive one-year term for transportation of methamphetamine, and a consecutive one-year term for a conviction for felony vehicle theft with a prior conviction (Veh. Code, § 10851, subd. (a)) in Sacramento County case No. 11F02085. The trial court granted a certificate of probable cause.

At the sentencing hearing on December 5, 2011 (two months after the effective date of the Realignment Act), the trial judge asked counsel to address the penal disposition:

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[1] Undesignated statutory references are to the Penal Code.

“THE COURT: I thought when I was reading through this that there was an issue of whether it was local county jail time or [prison] time, and if you would just make sure [the prosecutor] is up to speed on whatever the defense position is on that, that would be great.

“[DEFENSE COUNSEL]: I will. We actually clarified it when we entered the plea --

“THE COURT: Right.

“[DEFENSE COUNSEL]: -- so I’ll talk to [the prosecutor].

“THE COURT: Okay. Thank you. [¶] . . . [¶]

“[DEFENSE COUNSEL]: This is -- [defendant] did stipulate to four years in state prison. . . .”

DISCUSSION

With certain exceptions, felons sentenced under the Realignment Act are committed to county jail rather than state prison, may have a concluding portion of their sentence suspended in lieu of probation, and are not subject to parole. (§§ 3000 et. seq., 1170, subds. (h)(1)-(3), (5).) But prison sentences are imposed for felons who have current or prior serious or violent felony convictions, who are required to register as sex offenders, or who have sustained a section 186.11 aggravated white collar crime enhancement. (§ 1170, subd. (h)(3).)

The Realignment Act sentencing scheme applies to defendants sentenced on or after October 1, 2011. (§ 1170, subd. (h)(6).) Defendant was sentenced on December 5, 2011. Although he has no current or prior conviction which would exempt him from the

Realignment Act, defendant was sentenced to state prison because, on July 11, 2011, he had already been sentenced to a two-year state prison term in case No. 11F02085. The prison sentence in this case was authorized by section 1170.1, subdivision (a), which states: "Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in the county jail pursuant to subdivision (h) of Section 1170."

Defendant argues that the prospective application of section 1170, subdivision (h) violates his equal protection rights, relying on *In re Kapperman* (1974) 11 Cal.3d 542 (*Kapperman*). Defendant claims there is no rational basis for discriminating between defendants sentenced before and after the effective date of the Realignment Act. He argues the sentence imposed by the trial court creates an arbitrary classification of prisoners.

Kapperman involved actual presentence credit and is distinguishable from this case. (See *People v. Brown* (2012) 54 Cal.4th 314, 330.) In any event, defendant's equal protection claim lacks merit because he received a stipulated sentence after the effective date of the Realignment Act pursuant to section 1170.1, subdivision (a).

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.