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

THE PEOPLE,

Plaintiff and Respondent,

v.

SUSAN LYN HICKS,

Defendant and Appellant.

C079523

(Super. Ct. No.
MFE12003236)

Defendant Susan Lyn Hicks appeals from the trial court’s order granting her petition for resentencing pursuant to Penal Code section 1170.18¹ and imposing the same sentence as originally ordered. She contends the trial court did not have jurisdiction to resentence her on counts not affected by the resentencing petition. We shall affirm.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

Defendant had a bookkeeping business in the Mammoth Lakes area. Between January 1, 2006, and May 1, 2012, she forged hundreds of checks from her clients, obtaining \$381,806 of their money for her personal use. She pleaded guilty to 269 counts of check forgery (§ 470, subd. (d)) and 18 counts of forgery of fictitious checks (§ 476). The trial court sentenced her to a split term of eight years in county jail and six years four months of mandatory supervision. This consisted of an upper term of three years on count 122, consecutive eight-month terms on counts 1-3, 13, 17, 25, 57, 103, 123, 127, 190, 235, 240, 245, 260, 273, and 290, and concurrent three-year terms on the remaining counts.

Defendant subsequently filed a section 1170.18 petition seeking resentencing on the 33 counts involving checks of \$950 or less (counts 2-7, 9, 36-38, 43, 46, 50, 55, 56, 219, 220, 237, 273-278, 280, 282, 284-290). The trial court granted the petition, reducing those counts to misdemeanors and imposing concurrent terms as to each of those counts. The court resentenced defendant to the same term as before, changing the concurrent terms on four counts unaffected by the petition (counts 16, 19, 281, & 283) to consecutive eight-month terms.

DISCUSSION

In November 2014, California voters approved Proposition 47 making “certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) As relevant here, Proposition 47 enacted a resentencing provision, section 1170.18, under which, “a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. [Citation.]” (*Rivera*, at p. 1092.) If a conviction qualifies for resentencing, “the

petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor," absent certain disqualifying factors not relevant here. (§ 1170.18, subd. (b).) "Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence." (*Id.*, subd. (e).)

Defendant contends the trial court lacked jurisdiction to change the sentence on concurrent terms on counts 16, 19, 281, and 283 because it has jurisdiction over only the counts redesignated as misdemeanors. According to defendant, in a section 1170.18 proceeding, a trial court has discretion only to redesignate the affected felonies to misdemeanors and nothing more. We disagree.

"Section 1170.1, subdivision (a) creates an exception to the general rule that jurisdiction ceases when execution of sentence begins. '[W]hen a defendant is sentenced consecutively for multiple convictions, whether in the same proceeding or in different proceedings, the judgment or aggregate determinate term is to be viewed as interlocking pieces consisting of a principal term and one or more subordinate terms. (§ 1170.1, subd. (a).) Section 1170.1, with certain exceptions, also places certain restrictions on the sentencing judge's discretion such as limiting the term of imprisonment for a subordinate term to no more than one-third the middle term of imprisonment for such conviction' [Citation.]" (*People v. Sellner* (2015) 240 Cal.App.4th 699, 701 (*Sellner*)). Therefore, when resentencing a defendant in a section 1170.18 proceeding, a trial court's jurisdiction extends to all components of the sentence, not merely those counts reduced to misdemeanors pursuant to the petition. (*Sellner*, at pp. 701-702.)

While *Sellner* involved the grant of a resentencing petition as to the count constituting the principal term (see *Sellner, supra*, 240 Cal.App.4th at p. 702), this is a distinction without a difference. When a subordinate term is reversed and the case remanded for resentencing, a trial court has jurisdiction to resentence defendant on all counts, so long as the new sentence does not exceed the originally impose sentence.

(People v. Burbine (2003) 106 Cal.App.4th 1250, 1256 [“under principles already elucidated in the case law, the trial judge’s original sentencing choices did not constrain him or her from imposing any sentence permitted under the applicable statutes and rules on remand, subject only to the limitation that the aggregate prison term could not be increased”]; accord, People v. Navarro (2007) 40 Cal.4th 668, 681.) “When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components.” (*People v. Hill (1986) 185 Cal.App.3d 831, 834.*)

Section 1170.18 gives a court jurisdiction to resentence a defendant who has felony convictions that qualify for resentencing. The only limit it places on resentencing is that the trial court may not impose a greater term than the original sentence. It does not change the fact that a sentence is a single entity rather than a series of discrete sentences on individual counts and enhancements. We accordingly conclude that in a section 1170.18 proceeding, a trial court has the same authority to resentence defendant as it would when one or more counts are reversed on appeal and the case is remanded for resentencing. The trial court is therefore free to exercise its discretion in resentencing defendant so long as the sentence is not greater than the original term.

Since the trial court did not impose a greater term on resentencing, the sentence imposed here was within its jurisdiction.

