Filed 5/29/19 P. v. Carter CA3

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. DOMINIC CARTER, Defendant and Appellant.	C086378 (Super. Ct. No. 15F07668)

Defendant Dominic Carter pleaded no contest to attempted murder (Pen. Code, §§ 664, 187, subd. (a); count one),[1] attempted second degree robbery (§§ 664, 211), and admitted the truth of the firearm enhancement associated with count one (§ 12022.53, subd. (c)). In exchange for these pleas and an agreed upon sentence of

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

25 years 8 months, the People requested that the court dismiss the remainder of the charges against defendant with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. The trial court accepted this plea and, on December 8, 2017, sentenced him accordingly. Defendant timely appealed and was denied his request for a certificate of probable cause.

Defendant argues remand is necessary for trial court to exercise its sentencing discretion authorized by the passage of Senate Bill No. 620. The People concur remand for resentencing is required.

On October 11, 2017, the Governor signed Senate Bill No. 620 (2017-2018 Reg. Sess.) that amended sections 12022.5 and 12022.53, effective January 1, 2018 (Stats. 2017, ch. 682, §§ 1-2), to permit a trial court to strike certain firearm enhancements: "The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law." (§ 12022.53, subd. (h).)

We agree with the parties that Senate Bill No. 620's amendment should be applied retroactively, and thus, remand is necessary to allow the trial court to exercise its newly authorized sentencing discretion. The fact the parties stipulated to a specific term does not insulate the plea agreement from future changes in the law the Legislature intended to apply retroactively, which the People concede Senate Bill 620 does. (*People v. Woods* (2018) 19 Cal.App.5th 1080, 1091 [Senate Bill 620 amendments apply retroactively]; *Harris v. Superior Court* (2016) 1 Cal.5th 984, 987 [defendant who pleaded no contest to grand theft offense in exchange for stipulated six-year sentence could petition to reduce his conviction to a misdemeanor and recall his sentence under subsequently enacted

Proposition 47 and the People were not permitted to rescind the plea agreement and reinstate dismissed charges].)

While plea agreements are a form of contract, and their terms, like the terms of any contract, are to be enforced, "[u]nless a plea agreement contains a term requiring the parties to apply only the law in existence at the time the agreement is made" (*People v. Hurlic* (2018) 25 Cal.App.5th 50, 57), "the general rule in California is that the plea agreement will be ' "deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy . . . ." ' " (*Doe v. Harris* (2013) 57 Cal.4th 64, 66). Although the parties to a particular plea bargain might affirmatively agree the consequences of the plea will remain fixed despite amendments to the relevant law (*Harris v. Superior Court*, *supra*, 1 Cal.5th at p. 991), courts will not amend a plea agreement to add such a provision. (*Hurlic*, *supra*, 25 Cal.App.5th at p. 57).

There is nothing in the record that shows defendant's plea agreement contains a term incorporating only the law in existence at the time of execution. We decline to infer such a provision on appeal. Defendant's plea agreement is deemed to incorporate the subsequent enactment of Senate Bill 620, giving defendant the benefit of its provisions without depriving the People of the benefit of their bargain. (*Hurlic*, *supra*, 25 Cal.App.5th at p. 57 [defendant's plea agreement with a stipulated term of imprisonment was subject to later enacted Senate Bill 620].) We shall remand the matter to allow the trial court to consider whether to exercise its discretion to strike the section 12022.53 firearm enhancement.

DISPOSITION

We remand to allow the trial court to exercise its sentencing discretion under Penal Code section 12022.53, subdivision (h), concerning whether to strike the firearm enhancement. The judgment is otherwise affirmed.

/s/
HOCH, J.

We concur:

/s/
RAYE, P. J.

/s/
RENNER, J.