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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CUITLAHUAC TORRES GARCIA,

Defendant and Appellant.

E057524

(Super.Ct.No. RIF1200696)

OPINION

APPEAL from the Superior Court of Riverside County. Raymond P. Van Stockum\* and Helios (Joe) Hernandez, Judges. Affirmed.

Paul Stubb, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

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\* (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

On June 17, 2010, defendant and appellant Cuitlahuac Torres Garcia pled guilty to felony use of false resident alien documents (count 1 - Pen. Code, § 114)<sup>1</sup> in the San Bernardino Superior Court. Pursuant to the plea agreement, the court granted defendant three years' probation. On March 2, 2012, the court ordered defendant's probation transferred to Riverside County. On September 4, 2012, defendant filed a motion pursuant to section 17, subdivision (b) to reduce the offense for which he was convicted to a misdemeanor.

The court denied the motion. Defendant appeals contending the court erred in failing to exercise its discretion to reduce his felony conviction to a misdemeanor. The People concur. We remand the matter with directions to the Riverside Superior Court that it exercise its discretion pursuant to section 17, subdivision (b), whether to reduce defendant's conviction to a misdemeanor.

#### FACTS AND PROCEDURAL HISTORY

On May 22, 2010, an Ontario police officer was patrolling an area known for prostitution and narcotics activity. The officer watched a vehicle driven into a motel parking lot; the passenger exited, went up to the third floor of the motel, and returned approximately three minutes later. The officer followed the car as it was driven away

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<sup>1</sup> All further statutory references are to the Penal Code.

from the motel. The driver eventually failed to put the car's blinker on; the officer conducted a traffic stop and contacted defendant, the driver.

The officer determined defendant had an outstanding arrest warrant. The officer arrested defendant and conducted an inventory of his vehicle prior to impoundment. Defendant's glove box contained a social security and a permanent resident card in another individual's name. The latter had defendant's picture, but did not reflect his correct birth date. Defendant admitted fraudulently using the social security and permanent resident cards for employment purposes. He stated he had purchased the cards four years earlier in Los Angeles.

The People charged defendant by complaint with use of false documents (count 1 - § 114) and forgery of a public seal (count 2 - § 472). Defendant pled guilty to count 1 in return for dismissal of count 2 and a grant of probation.

At the hearing on defendant's motion to reduce his conviction to a misdemeanor on September 12, 2012, the court stated "I want San Bernardino to handle it, but even if it was a Riverside case, he hasn't finished his term of probation." The court further noted, "Maybe after the term of probation is over . . . but right now you made a contract. He avoided state prison or more time in jail in return for getting probation and 180 days, and I'm not inclined to interfere with that contract." The court ended the hearing with, "[h]e's on probation and it was an agreement made in San Bernardino. And the proper time to bring that motion was -- is either at the time of the plea or the prelim or after the probation is over."

## DISCUSSION

Defendant contends that since the Riverside Superior Court had jurisdiction over his probation, the court had discretion to reduce his felony conviction to a misdemeanor pursuant to section 17, subdivision (b). He maintains the court's failure to exercise such discretion was an abuse of discretion. Defendant further notes nothing prevents a court from exercising such discretion during a defendant's probationary period and that nothing in his plea agreement barred him from seeking reduction of his offense. The People concur. We agree.

“[S]ection 17(b) . . . rests the decision whether to reduce a wobbler solely ‘in the discretion of the court.’ . . . [Citation.]” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) “[S]ince all discretionary authority is contextual, those factors that direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ [Citations.]” (*Id.* at p. 978.) “[A] trial court will abuse its discretion . . . if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision. [Citations.] A failure to exercise discretion also may constitute an abuse of discretion. [Citations.]” (*People v. Sandoval* (2007) 41 Cal.4th 825, 847-848.)

“An application by a defendant to have the trial court declare a ‘wobbler’ a misdemeanor may be made at any time, even after probation is terminated [citation], and in permitting this application, section 17, subdivision (b)(3) does not distinguish between

convictions obtained by guilty pleas and those obtained after trials.” (*People v. Wood* (1998) 62 Cal.App.4th 1262, 1267, fn. 3; *Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 136 [A defendant may request the court reduce a felony offense to a misdemeanor during or after he has served his probationary period.]; *People v. Feyrer* (2010) 48 Cal.4th 426, 439 [Probation statutes confer jurisdiction upon trial court to reclassify offense during the term of probation.], superseded by statute on another ground as stated in *People v. Park* (2013) 56 Cal.4th 782, 805.) “[A] trial court is under a duty to hear and determine on the merits all matters which are properly before it, and within its jurisdiction. [Citation.]” (*Meyer v. Superior Court, supra*, 247 Cal.App.2d 133, 136.)

Here, defendant’s probation was transferred from San Bernardino County Superior Court to Riverside County Superior Court which gave the latter jurisdiction over the entire case. (§ 1203.9, subd. (b).) Thus, the court had jurisdiction to rule on defendant’s motion. Moreover, as noted above, a defendant may move to have a felony wobbler conviction reduced to a misdemeanor at any time, including during his probation. (*People v. Wood, supra*, 62 Cal.App.4th 1262 at p. 1267, fn. 3.) Finally, nothing in defendant’s plea agreement prohibited him from seeking a reduction in the characterization of his offense pursuant to section 17, subdivision (b). Thus, the court’s failure to exercise its discretion in ruling on his motion was an abuse of discretion.

DISPOSITION

The judgment is affirmed. The matter is remanded to the Riverside Superior Court with directions to exercise its discretion in ruling on defendant's section 17, subdivision (b) motion to reduce his felony conviction to a misdemeanor.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

CODRINGTON

J.