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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

STEVEN LOYAL EARLES,

Defendant and Respondent.

E063012

(Super.Ct.No. RIF1202872)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Michael A. Hestrin, District Attorney, and Emily R. Hanks, Deputy District Attorney for Plaintiff and Appellant.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Respondent.

The court granted defendant and respondent Steven Loyal Earles' petitions for resentencing filed pursuant to Penal Code section 1170.18, subdivision (a).¹ On appeal, the People contend the court erred in granting the petition without providing them an opportunity to be heard on the matter. We affirm.

I. PROCEDURAL BACKGROUND

On May 18, 2012, the People charged defendant by felony complaint with possession of clonazepam for sale (count 1; Health & Saf. Code, § 11378) and possession of methamphetamine for sale (count 2; Health & Saf. Code, § 11378). In addition, the People alleged as to both counts that defendant had suffered a prior conviction for possession of controlled substances for sale (Health & Saf. Code, § 11370.2, subd. (c)), that defendant had suffered a prior strike conviction (Pen. Code, §§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)), and that defendant committed the offenses while on probation.

On February 20, 2013, defendant pled guilty to an added count 3 of simple possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and admitted the prior strike conviction allegation. In return, counts 1 and 2 were dismissed and defendant was sentenced to one-third the midterm, a total of 16 months, consecutive to a sentence in another case.

On December 15, 2014, defendant filed a petition for resentencing pursuant to section 1170.18, subdivision (a), which was not served on the People. On December 23,

¹ All further statutory references are to the Penal Code unless otherwise indicated.

2014, defendant filed another petition for resentencing, which reflected that it was served on the People. On January 13, 2015, a deputy district attorney signed a completed response requesting a hearing be set on defendant's petitions.² The response reflected that it was due on January 14, 2015.³ The response indicated the People believed a hearing should be set on whether to withdraw defendant's pleas or resentence defendant.

On February 3, 2015, the court granted defendant's petitions. The court ordered defendant's conviction for possession of a controlled substance be deemed a

² We granted the People's request for augmentation of the record to include their response. Apparently, the response was contained in the superior court file; however, the response bears no stamp indicating it was formally filed or received by the court. The response does bear a stamp dated February 5, 2015; however, this stamp fails to indicate what it commemorates (whether filing, receipt, or something else) and fails to indicate on behalf of what entity it was stamped. We take judicial notice of Riverside County Superior Court's docket in the instant case which reflects the court received the People's response on January 27, 2015. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

³ Contrary to defendant's contention, there is nothing in the record indicating *the court* ordered a response filed by January 14, 2015. Rather, the only indication a response was due by that date was the notation by *the deputy district attorney* on the response itself. In addition, defendant contends the People failed to respond to defendant's petition, neglecting to explain why the People's response requesting a hearing on the matter would not be a considered a response itself. Presumably, defendant maintains only a formal opposition bearing points and authorities would be deemed a "response." Of course, both of defendant's petitions were informal requests made without points and authorities. Rather, both the petitions and the response were check-marked forms. We take judicial notice of Riverside County Superior Court's form No. RI-CR039, the court's form for defendants to file petitions for resentencing pursuant to Penal Code section 1170.18. (Evid. Code, §§ 452, subd. (d), 459, subd. (a); <<http://riverside.courts.ca.gov/localfrms/ri-cr039.pdf>>.) We note that the form reflects that "the District Attorney will have 30 days from the date of filing to respond." "If the District Attorney opposes resentencing, the court will hold a hearing and you will be given notice of the hearing. At the conclusion of the hearing, the court will decide whether or not to resentence you." Nevertheless, there does not appear to be any statutory authority or local rule establishing the People's right to file a response within 30 days of the filing of the petition or the right to a hearing if the People do file a response.

misdemeanor, that his sentence be changed to 364 days in custody with credit for time served, and that defendant report to parole immediately upon release. The order bears a notation “No DA RESP.” The minute order reflects that the “People stipulate to resentencing and waives appearance” though no such stipulation or waiver appears in the record.

II. DISCUSSION

The People contend the court violated their right to due process by granting defendant’s petition without providing them an opportunity to be heard. The People maintain their opposition to the petition at such a hearing would have been that resentencing would have violated the basis of the bargain made when defendant agreed to plead guilty to a *felony* offense. We hold that even assuming the court was required to hold a hearing when determining defendant’s eligibility for resentencing, any error was harmless because the fact that defendant pled guilty to a felony pursuant to a plea agreement was irrelevant to the court’s order granting defendant’s petitions.

“On November 4, 2014, the voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act” (hereafter Proposition 47), which went into effect the next day. [Citation.]’ [Citation.] Section 1170.18 ‘was enacted as part of Proposition 47.’ [Citation.] Section 1170.18 provides a mechanism by which a person currently serving a felony sentence for an offense that is now a misdemeanor, may petition for a recall of that sentence and request resentencing in accordance with the offense statutes as added or amended by Proposition 47. [Citation.] A person who satisfies the criteria in

subdivision (a) of section 1170.18, shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ [Citation.]” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2.)

“““In interpreting a voter initiative . . . we apply the same principles that govern statutory construction. [Citation.] Thus, ‘we turn first to the language of the statute, giving the words their ordinary meaning.’ [Citation.] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate’s intent]. [Citation.] When the language is ambiguous, ‘we refer to other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.’ [Citation.]” [Citation.] In other words, “our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure.”” [Citation.]” (*T.W. v. Superior Court, supra*, 236 Cal.App.4th at pp. 651-652.)

“[Penal Code s]ection 1170.18, subdivision (a) provides: ‘A person currently serving a sentence for a conviction, *whether by trial or plea*, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (“this act”) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing”’ (*T.W. v. Superior Court, supra*, 236 Cal.App.4th at p. 651.) Proposition 47 reduced the offense of possession of a controlled substance from a felony to a misdemeanor. (See Health & Saf. Code, § 11377; Pen. Code, § 1170.18, subd. (a).)

“Here, section 1170.18 clearly and unambiguously states, ‘A person currently serving a sentence for a conviction, *whether by trial or plea*’ of eligible felonies may petition for resentencing to a misdemeanor. [Citation.]” (*T.W. v. Superior Court, supra*, 236 Cal.App.4th at p. 652.) “After a petitioner is found to be eligible, the trial court must grant the petition for reduction of sentence unless the court finds in its discretion that the petitioner poses an unreasonable risk of committing a very serious crime. [Citation.] The statute does not otherwise automatically disqualify a petitioner and nothing in section 1170.18 reflects an intent to disqualify a petitioner because the conviction was obtained by plea agreement.” (*Ibid.*) Thus, a defendant is “entitled to petition for modification of his sentence, notwithstanding the fact his conviction was obtained by a plea agreement.” (*Id.* at p. 653, fn. omitted.)

Here, as in *T.W.*, defendant was statutorily entitled to resentencing regardless of whether he was convicted pursuant to a plea agreement in which he pled guilty to a felony offense. The only basis upon which the court could have denied his petition for resentencing was if the court found defendant posed an unreasonable risk of danger to public safety. However, the People do not contend that defendant would pose such a danger or that they would have argued he did at any hearing on the petitions. Rather, the People solely maintain that redesignation of defendant’s offense and reduction of his sentence violates the terms of his plea agreement. As discussed above, that contention fails because section 1170.18 applies retroactively regardless of whether a defendant was

convicted by trial or plea. (*T.W. v. Superior Court, supra*, 236 Cal.App.4th at pp. 650-652.)

With respect to the People's contention that they were entitled to a hearing on defendant's petition, the People cite *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279. In *Kaulick*, the appellate court held that prior to issuing an order on a petition for resentencing pursuant to section 1170.126 a court must insure that the People have "received notice and an opportunity to be heard *on the issue of dangerousness*." (*People v. Superior Court (Kaulick), supra*, at p. 1286, italics added.) Although the court noted that its discussion was "framed in terms of the trial court's discretionary determination of the defendant's dangerousness . . . [,] an argument can be made that the prosecution also has the right to notice and a hearing on the issue of whether a prisoner is initially *eligible* for resentencing" (*Id.* at pp. 1298-1299, fn. 21.) Thus, "[t]o the extent the court's determination may be based on anything other than the undisputed record of the prisoner's conviction, the prosecution could certainly argue that it has a right to present evidence and to be heard on the issue." Nevertheless, since that issue was not presented, the court expressed no opinion on the matter. (*Ibid.*)

Here, the People have not contended they would have argued defendant posed an unreasonable risk of danger to public safety. Moreover, the court did not render any determination as to the issue of dangerousness. Assuming, arguendo, that the People were entitled to a hearing if they had filed the response within 30 days of defendant's petition, the People filed their response more than 30 days after the date when even

defendant's latter petition was filed. Thus, the people were not entitled to a hearing because their response was late.

Regardless, even assuming, arguendo, that the People were entitled to a hearing without respect to when or if they filed a response, any error was harmless since the People have not indicated they would have argued defendant posed a risk of dangerousness or that the court's determination of defendant's eligibility for resentencing should be based on anything other than defendant's record of conviction. The People provide no legal authority for finding that the court erred in granting defendant's petition. Thus, the court acted appropriately in granting defendant's petition for resentencing.

III. DISPOSITION

The judgment is affirmed.

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KING
J.

We concur:

RAMIREZ
P. J.

MILLER
J.