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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CORNELL COOPER BROWN,

Defendant and Appellant.

F071798

(Kern Super. Ct. No. SC083981A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

John J. Hardesty, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Ian Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J. and Detjen, J.

INTRODUCTION

The Three Strikes Reform Act of 2012 (Prop. 36) permits third strike offenders serving indeterminate life sentences for crimes that are not serious or violent felonies to petition for resentencing. (Pen. Code, § 1170.126 et seq.)¹ If a petitioning offender satisfies the statute’s eligibility criteria, they are resentenced as a second strike offender “unless the court, in its discretion, determines that resentencing would pose an unreasonable risk of danger to public safety.” (§ 1170.126, subd. (f).)

Following the enactment of Proposition 36, defendant filed a petition for recall of sentence. The trial court found defendant posed an unreasonable risk to public safety, however, and denied the petition. On appeal, defendant contends (1) the trial court abused its discretion by denying defendant’s petition for recall of sentence, and (2) the definition of “unreasonable risk of danger to public safety” included in section 1170.18, subdivision (c), applies to Proposition 36. We affirm.

FACTS

On October 7, 2002, defendant was found guilty of one count of battery on a correctional officer by gassing (§ 4501.1) and two counts of battery on a correctional officer (§ 4501.5). At the time of defendant’s sentencing, he had two prior strike offenses: a 1994 conviction for dissuading/threatening a witness (§ 136.1, subd. (c)) and a 2001 conviction for making criminal threats (§ 422). Accordingly, the trial court sentenced defendant as a third strike offender to three consecutive terms of 25 years to life in prison.

Following the passage of Proposition 36, defendant filed a petition for recall of sentence. At a hearing on the motion, defendant asserted he earned his general equivalency degree (GED) while incarcerated, had participated in group psychotherapy sessions and substance abuse programs, and had developed marketable skills as well. He

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

also denied the circumstances surrounding his third strike convictions. In response, the People presented evidence that defendant's criminal record included 10 criminal convictions and five prior prison terms, including a conviction for threatening to kill his pregnant girlfriend with a knife. The People also presented evidence showing defendant had 32 "CDC 115" rule violations between 2002 and 2012.² Among the violations were a number of incidents involving assaultive or threatening behavior towards correctional officers and staff.

At the conclusion of the hearing, the trial court denied defendant's petition for recall of sentence, noting the circumstances of defendant's criminal convictions, his persistent rule violations, and his mental health evaluations that stated he suffered from delusions causing him to act aggressively.

This appeal followed.

DISCUSSION

I. The trial court did not abuse its discretion by denying defendant's petition.

Under Proposition 36, statutorily eligible petitioners "shall be resentenced ... unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.126, subd. (f).) In exercising its discretion, "the court may consider: [¶] (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a

² A "CDC 115" refers to a rules violation report that documents misconduct that is believed to be a violation of law or is not minor in nature. (*In re Roderick* (2007) 154 Cal.App.4th 242, 249; Cal. Code Regs., tit. 15, § 3312, subd. (a)(3).)

new sentence would result in an unreasonable risk of danger to public safety.”

(§ 1170.126, subd. (g).)

We review a trial court’s determination that an inmate poses an unreasonable risk of danger to public safety for an abuse of discretion. “[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

In the instant case, the record displays that defendant has 10 criminal convictions and is currently serving his fifth prison sentence. The record also shows a history of violent threats preceding his current incarceration, and numerous rule violations in prison for violent threats and insubordination during his current incarceration. Indeed, defendant sustained his third strike while incarcerated, and has a rule violation for a violent threat from as recently as March of 2015.

Appellant attempts to minimize this criminal history by alleging his poor behavior is restricted to the prison setting. Defendant’s criminal history prior to his current incarceration belies this claim. Additionally, while defendant asserts he will not pose a danger to public safety due to his age at the time he would be released,³ defendant’s record shows no decline in violent or threatening behavior with age. Given defendant’s violent criminal history and extensive list of rule violations while incarcerated, we cannot conclude the trial court abused its discretion by determining defendant posed an unreasonable risk of danger to public safety.

II. Proposition 47’s definition of “unreasonable risk of danger to public safety” does not apply to appellant’s petition.

On November 4, 2014, voters enacted the Safe Neighborhoods and Schools Act (Prop. 47). Under Proposition 47, certain offenses that were previously sentenced as felonies or “wobblers” were reduced to misdemeanors, and individuals serving felony

³ Defendant was born in 1963.

sentences for those offenses were permitted to petition for resentencing. (§ 1170.18, subd. (a).) Assuming the petitioning inmate meets the statutory eligibility requirements, the trial court must resentence the inmate in accordance with Proposition 47 “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18, subd. (b).)

Unlike Proposition 36, Proposition 47 specifically defines “ ‘unreasonable risk of danger to public safety.’ ” (§ 1170.18, subd. (c).) That definition reads as follows: “As used throughout this Code, ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.” (*Ibid.*)

Section 667, subdivision (e)(2)(C)(iv) enumerates eight felonies or classes of felonies:

“The defendant suffered a prior serious and/or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

“(I) A ‘sexually violent offense’ as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

“(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

“(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

“(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

“(V) Solicitation to commit murder as defined in Section 653f.

“(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

“(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

“(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.”

On appeal, defendant asserts that this definition of “unreasonable risk of danger to the public safety” also applies to petitions for resentencing under Proposition 36. We disagree.⁴

“ ‘ “When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.” ’ ” (*People v. Hendrix* (1997) 16 Cal.4th 508, 512.). However, “the language of a statute should not be given a literal meaning if doing so would result in absurd consequences that the [voters] did not intend.” (*In re Michele D.* (2002) 29 Cal.4th 600, 606.)

Here, it appears clear that the phrase “[a]s used throughout this Code,” employed in section 1170.18, subdivision (c), refers to the entire Penal Code, not merely the provisions contained in Proposition 47. (See *People v. Bucchierre* (1943) 57 Cal.App.2d 153, 164–165, 166; see also *Marshall v. Pasadena Unified School Dist.* (2004) 119 Cal.App.4th 1241, 1254–1255; *People v. Vasquez* (1992) 7 Cal.App.4th 763, 766.) We conclude, however, that such an interpretation would lead to consequences the voters did not intend when they enacted Proposition 47.

By its provisions, Proposition 47 reduces the sentences of inmates serving felony sentences for specified offenses that are now classified as misdemeanors. Nowhere in the ballot materials on Proposition 47 were voters informed the law would also modify the

⁴ This issue is currently pending review by the Supreme Court. (See *People v. Valencia*, review granted Feb. 18, 2015, S223825; *People v. Payne*, review granted Mar. 25, 2015, S223856.)

resentencing provisions of Proposition 36, which concerns recidivist inmates serving sentences for felony offenses that remain classified as felonies.

The official title and summary, legal analysis, and arguments for and against Proposition 47 are all silent on what effect, if any, Proposition 47 would have on Proposition 36. As we cannot conclude the voters intended an effect of which they were unaware, we decline to conclude the voters intended for Proposition 47's definition of "unreasonable risk of danger to public safety" to apply to section 1170.126, subdivision (f), of Proposition 36.

Further, while we are aware "[i]t is an established rule of statutory construction ... that when statutes are *in pari materia* similar phrases appearing in each should be given like meanings," we are not persuaded that Propositions 36 and 47 are *in pari materia*. (*People v. Caudillo* (1978) 21 Cal.3d 562, 585, overruled on another ground in *People v. Martinez* (1999) 20 Cal.4th 225, 229, 237, fn. 6.) Two "[s]tatutes are considered to be *in pari materia* when they relate to the same person or thing, to the same class of person[s] or things, or have the same purpose or object." (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, fn. 4, quoting 2A Sutherland, *Statutory Construction* (Sands, 4th ed. 1984) § 51.03, p. 467.)

Here, Proposition 47 deals with individuals sentenced as felons for crimes that are now misdemeanors, while Proposition 36 deals with inmates with at least two violent or serious felonies who are currently serving indeterminate life sentences for a third felony conviction. These laws deal with very different levels of punishment and very different severity of offenses. Even if the statutes are *in pari materia*, however, canons of statutory instruction are not dispositive, and serve as "mere[] aids to ascertaining probable legislative intent" (*Stone v. Superior Court* (1982) 31 Cal.3d 503, 521, fn. 10.)

Given our review of Proposition 47, we must conclude that voters intended the law to apply to the sentencing and resentencing of the misdemeanor offenses enumerated within that law, and not to the previously enacted provisions of Proposition 36.

Accordingly, defendant is not entitled to remand that would subject his resentencing under Proposition 36 to the definition of “unreasonable risk of danger to public safety” contained in Proposition 47.

DISPOSITION

The order is affirmed.