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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH CORBIN,

Defendant and Appellant.

G051145

(Super. Ct. No. 12NF0754)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Vickie L. Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Ryan H. Peeck, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph Corbin appeals from a postjudgment order granting his petition to recall his felony conviction, reduce it to a misdemeanor, and resentence him because he was not still serving a sentence when he was on postrelease community supervision. Corbin argues the trial court erred by imposing one year of parole when it granted his petition. We disagree and affirm the order.

FACTS

After having been charged with the sale or transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), and possession for sale of a controlled substance (Health & Saf. Code, § 11351), Corbin pleaded guilty to felony possession of a controlled substance (Health & Saf. Code, § 11350), and admitted numerous prior convictions (Pen. Code, §§ 667, subds. (d) & (e)(1), 1170.12, subds. (b) & (c)(1), 667.5, subd. (b); all further statutory references are to the Penal Code, unless otherwise indicated). The factual basis for his plea was that on March 10, 2012, “[he] knowingly [and] unlawfully possessed a useable quantity of a controlled substance, to wit: cocaine.” In his plea agreement, Corbin acknowledged he was subject to postrelease community supervision (PRCS) for three years. In May 2012, the trial court sentenced Corbin to 28 months in prison as follows: 16 months for the simple possession count and 12 months for the prior prison term.

On December 4, 2014, Corbin filed a petition to recall his felony conviction, designate it a misdemeanor, and resentence him. At a hearing, the trial court indicated it was inclined to grant Corbin’s petition, sentence him to time served, and place him on one year of parole. Defense counsel objected to imposition of parole because the “time that he served on the case essentially maxes him out” The court disagreed, stating Corbin was on PRCS and “is currently serving a sentence under” section 1170.18. Corbin accepted the court’s offer but objected to parole. The court granted Corbin’s petition, sentenced him to 365 days in jail time served, and placed him on one year of parole.

DISCUSSION

Corbin contends the trial court erred by imposing parole because he was on PRCS and not “currently serving a sentence for a conviction.” Not so.

In 2011, the Legislature enacted what it called “the 2011 Realignment Legislation addressing public safety.” (Stats. 2011, ch. 15, § 1.) “In the wake of realignment, a person released from prison is subject to a period of either parole (§ 3000 et seq.) or [PRCS] (§ 3450 et seq.). [Citation.] Parole applies to high-level offenders, i.e., third strikers, high-risk sex offenders, and persons imprisoned for serious or violent felonies or who have a severe mental disorder and committed specified crimes. (§ 3451, subd. (b).) All other released persons are placed on [PRCS]. (§ 3451, subd. (a).)” (*People v. Armogeda* (2015) 233 Cal.App.4th 428, 434.)

“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. (Cal. Const., art. II, § 10, subd. (a).)” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*)). “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). Proposition 47 did the following: (1) added chapter 33 to the Government Code (§ 7599 et seq.), (2) added sections 459.5, 490.2, and 1170.18 . . . , and (3) amended . . . sections 473, 476a, 496, and 666 and Health and Safety Code sections 11350, 11357, and 11377. [Citation.]” (*Rivera, supra*, 233 Cal.App.4th at p. 1091.)

Proposition 47 added section 1170.18. Section 1170.18 in relevant part provides:

“(a) 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 in accordance with [s]ections 11350, 11357, or 11377 of the Health and Safety Code, or [s]ection 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

“(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to [s]ections 11350, 11357, or 11377 of the Health and Safety Code, or [s]ection 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following: [¶] (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. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. [¶] . . . [¶]

“(f) A person who has *completed his or her sentence* for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” (Italics added.)

The issue here is whether someone who is on PRCS is “currently serving a sentence” or instead “has completed his or her sentence.” *People v. Morales* (2015)

238 Cal.App.4th 42 (*Morales*), is instructive. In that case, the same panel of this court held PRCS was part of the felony sentence and because defendant was on PRCS when he filed his petition under section 1170.18, “he was still serving his sentence and thus subject to the parole requirement.” (*Morales, supra*, 238 Cal.App.4th at p. 48.) In doing so, the *Morales* court harmonized sections 1170.18’s, 3000’s, and 1170’s various uses of the word “sentence,” and their modifiers, to conclude PRCS is part of a felony sentence. We find *Morales* persuasive and follow it here. Neither the voters’ intent in passing Proposition 47, the rule of lenity, the possibility of two terms of parole,¹ nor analogies to probation compel a different conclusion.

DISPOSITION

The postjudgment order is affirmed.

O’LEARY, P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.

¹ Nor has Corbin established one year of parole would result in a longer term in violation of section 1170.18, subdivision (e).