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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.

ERNESTO CELAYA,

Defendant and Appellant.

G051193

(Super. Ct. No. 09CF1428)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Christopher Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part, reversed in part, and remanded with directions.

Steven M. Hinkle, 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, Eric A. Swenson, Kristine Gutierrez and Jennifer B. Troung, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ernesto Celaya appeals from a Proposition 47 resentencing order. He contends the court should not have imposed parole, or should have fixed a shorter parole period; and should have applied his excess custody credits to his parole period and his fines and fees, reduced his restitution and parole revocation fines, stricken his controlled substance offender registration, and stayed resentencing on one count.

We conclude the court: correctly imposed parole, but was required to fix a shorter parole period; properly refused to apply excess custody credits to the parole period, but should have applied them to any eligible fines and fees; was not required to reduce the restitution or parole revocation fines; was required to strike the controlled substance offender registration requirement; and properly resentenced on all counts.

### **FACTS AND PROCEDURAL HISTORY**

In 2009, defendant pled guilty to felony possession of methamphetamine (count 1), and misdemeanor possession of controlled substance paraphernalia (count 2). The court sentenced him to two years in prison on count 1, suspended imposition of sentence on count 2, awarded him 15 days custody credit, and ordered him to pay a certain mandatory fines and to register as a controlled substance offender.

In late 2014, defendant filed an application to redesignate his felony conviction on count 1 as a misdemeanor under Penal Code section 1170.18, subdivision (f) (1170.18(f)), all subsequent undesignated statutory references are to this code) or, in the alternative, to recall his sentence and reduce his felony conviction on count 1 to a misdemeanor under section 1170.18, subdivision (a) (1170.18(a)).

The court denied relief under 1170.18(f) on the grounds defendant was then on postrelease community supervision (PRCS) and thus was still serving his original sentence. But the court granted relief under 1170.18(a), reduced defendant's felony conviction on count 1 to a misdemeanor, resentenced him to 365 days in county jail, awarded him 365 days credit for time served and, over his objection, placed him on one year of parole under section 1170.18, subdivision (d) (1170.18(d)).

## DISCUSSION

### 1. Parole Imposition

Defendant contends the court should not have imposed parole at all, because a defendant on PRCS is not “currently serving a sentence” within the meaning of 1170.18(a). Citing rules of statutory interpretation and *People v. Nuckles* (2013) 56 Cal.4th 601, he claims the word “sentence” in the phrase “currently serving a sentence” excludes time spent on parole or PRCS. We disagree.

We continue to adhere to the position this court articulated in *People v. Pinon* (2015) 238 Cal.App.4th 1232, review granted November 18, 2015, S229632 (*Pinon*): a defendant on PRCS is still serving a sentence for purposes of section 1170.18(a). Thus, we conclude the court correctly imposed parole, after reducing defendant’s felony conviction to a misdemeanor.

### 2. Parole Period

Defendant also contends, and the Attorney General concedes, imposing a parole period extending beyond the expiration of his PRCS period violated section 1170.18, subdivision (e) (1170.18(e)), which states, “Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.” We agree. We explained in *Pinon* and we continue to believe the word “term” in 1170.18(e) refers to either a term of jail or a term of parole, so the court may not impose a parole term that exceeds the scheduled end date of a defendant’s PRCS.

In this case, defense counsel represented to the court at the resentencing hearing that defendant was released from prison on March 20, 2012. So it appears his three-year PRCS period would have expired on March 20, 2015. (§ 3451, subd. (a).) But the one-year parole period imposed by the court under 1170.18(d) would not have expired until November 21, 2015. Hence, to the extent the parole period imposed extended beyond the scheduled PRCS termination date, the court erred.

### 3. *Excess Custody Credits*

Defendant maintains that to the extent his custody credits exceeded those applied to his county jail sentence the court should have applied those excess custody credits to his parole period. This claim was recently rejected by the California Supreme court in *People v. Morales* (June 16, 2016, S228030) \_\_\_ Cal.4th \_\_\_ (*Morales*) [credit for time served does not reduce the parole period]. Therefore, the court correctly refused to apply defendant's excess custody credits to his parole period.

Defendant also contends the court should have applied his excess custody credits to any eligible fines and fees. We addressed this issue in *People v. Armogeda* (2015) 240 Cal.App.4th 1039, review granted December 9, 2015, S230374, and concluded excess custody credits must be applied to reduce the amount of any eligible fines and fees. We still hold this view. Accordingly, the court erred in failing to do so.

### 4. *Restitution and Parole Revocation Fines*

Defendant avers the court should have reduced his restitution and parole revocation fines, from the \$200 minimum for a felony committed in 2009, to the \$100 minimum for a misdemeanor committed that year. (§§ 1202.4, subd. (b)(1), 1202.44, 1202.45, subds. (a) & (b)). However, the maximum for a misdemeanor committed in 2009 was \$1,000. (*Ibid.*) Therefore, the \$200 fines imposed were authorized, even for a misdemeanor, and in any event defendant has forfeited the issue because he failed to object below. (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218.)

### 5. *Controlled Substance Offender Registration*

The parties rightly agree defendant is no longer required to register as a controlled substance offender under Health and Safety Code section 11590 (section 11590). When the court reduced count 1 to a misdemeanor, it became a "misdemeanor for all purposes." (§ 1170.18, subd. (k).) And section 11590 simply "does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377." (Health & Saf. Code, § 11590, subd. (c).) Consequently, the registration requirement must be stricken.

## 6. Sentencing on Count 2

When the court granted defendant relief and reduced the conviction on count 1 to a misdemeanor, it resentenced him to 365 days in county jail on both count 1 and count 2. Defendant contends the court was instead required to stay sentencing on count 2 under section 654, subdivision (a), which provides, “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

“Section 654 precludes multiple punishments for a single act or indivisible course of conduct.” (*People v. Hester* (2000) 22 Cal.4th 290, 294.) “The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple. Each case must be determined on its own facts. [Citations.] The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them.” (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135-1136.)

The factual basis for defendant’s guilty plea states, “I willfully and unlawfully possessed a useable quantity of methamphetamine and possessed an [*sic*] pipe used to smoke methamphetamine.” From this and the absence of any other evidence, defendant argues the record shows he possessed the pipe to smoke only the methamphetamine he possessed at that time, and as a result, he possessed the methamphetamine and the pipe with a single intent and objective – to use them together.

We are not persuaded. Defendant did not state he possessed the pipe for the sole purpose of smoking only the methamphetamine he possessed at that time; rather, for the more general purpose of smoking methamphetamine. So he could have possessed the pipe for smoking other methamphetamine at other times too. While we might normally be loath to parse defendant’s statement so closely, where there are no other facts, that statement is substantial evidence to support sentencing on counts 1 and 2.

## **DISPOSITION**

The portion of the resentencing order fixing a one-year parole period is reversed, and the matter is remanded with directions for the trial court to fix a parole period which ended no later than the last day of defendant's former PRCS period. The trial court shall also calculate and apply defendant's remaining excess custody credits to any unpaid eligible fines and fees, and strike his controlled substance offender registration requirement. In all other respects the resentencing order is affirmed.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.