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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.

ANDREW PHILLIP GREELEY,

Defendant and Appellant.

G051309

(Super. Ct. No. 12HF2543)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Christopher J. Evans, Commissioner. Affirmed.

James R. Bostwick, Jr., 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, Barry Carlton and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

Andrew Phillip Greeley appeals from an order granting his petition for resentencing under Proposition 47. Although he approves of the trial court's reduction of his felony convictions to misdemeanors, he contends the court erred in ordering him to serve a year on parole. We affirm the court's decision.

PROCEDURAL BACKGROUND

On September 4, 2012, appellant was charged with two counts of felony drug possession and one count of possessing drug paraphernalia, a misdemeanor. (Health & Saf. Code, §§ 11377, subd. (a), 11350, subd. (a), 11364.1, subd. (a).) The complaint also alleged one count of forgery, one prior strike conviction and five prior prison terms. (Pen. Code, §§ 476, 667, subds. (d)-(e)(2), 1170.12, subd. (b)-(c)(2), 667.5, subd. (b).)¹ Appellant waived his right to trial and pleaded guilty to or admitted all of the charges. The trial court sentenced him to four years in prison but stayed execution of sentence and granted probation on various terms and conditions. Appellant subsequently violated probation, triggering the four-year prison term, which he served. He was released on postrelease community supervision (PRCS) in September 2014.

Two months later, the voters passed Proposition 47, the Safe Neighborhoods and Schools Act. Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. Proposition 47 also added section 1170.18, which enables a defendant who has suffered a felony conviction for one of the reclassified offenses, including those involved here, to petition to have the conviction redesignated as a misdemeanor.

In January 2015, appellant filed a Proposition 47 petition for resentencing. The prosecution did not object to the petition, but it did request parole, due to appellant's criminal record. Defense counsel opposed that request on the basis appellant had already

¹ All further statutory references are to the Penal Code.

served the prison term in his underlying case. However, after reducing appellant’s felony convictions to misdemeanors, the court placed him on parole for one year.

DISCUSSION

Appellant contends the parole order was improper. Working on the assumption he was no longer serving the original sentence on his felony case when the court resentenced him, appellant claims the court lacked authority to subject him to parole. We find that assumption to be faulty and uphold the trial court’s order.

With respect to the imposition of parole upon resentencing, Proposition 47 draws a distinction between defendants who are currently serving their original sentences and those who have already completed their sentences. Whereas the law subjects defendants in the former category to one year of parole (§ 1170.18, subs. (a)-(d)), it does not require parole for defendants in the latter category (*id.*, at subd. (f)).²

At the time appellant was resentenced, he had completed his prison term, but he was still on PRCS, which is a form of parole. In fact, parole was a “mandatory component” of his original felony sentence. (*People v. Nuckles* (2013) 56 Cal.4th 601, 609.) While parole constitutes a “distinct phase” of a defendant’s punishment apart from his underlying prison term, it is an integral aspect of his original sentence during which

² Section 1170.18 provides in pertinent part:

“(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

“(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 . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.

“ [¶] . . . [¶]

“(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and *shall be subject to parole for one year following completion of his or her sentence*, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. . . .

“ [¶] . . . [¶]

“(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.)

time he is “subject to substantial restraints on his liberty and is deemed to remain in the constructive custody of the Department of Corrections and Rehabilitation.” (*Ibid.*)

Therefore, for purposes of Proposition 47, appellant was still serving his original sentence at the time he was resentenced.

In arguing otherwise, appellant points out that under section 1170.18, subdivision (d), “A person who is sentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year *following completion of his or her sentence . . .*” (Italics added.) Appellant contends this shows parole is separate from sentencing. However, by its terms, this provision governs the situation where the defendant is resentenced to a misdemeanor. Since misdemeanor sentences do not include a period of parole, it is hardly surprising parole is described as something that follows completion of the defendant’s sentence. However, this has no bearing on the defendant’s original felony sentence, which, as explained above, included a mandatory period of parole and which appellant was still serving at the time he was resentenced.

Appellant claims subjecting defendants who are already serving parole or PRCS to an additional term of parole after they are resentenced under Proposition 47 will frustrate the initiative’s goal to save taxpayer dollars by reducing the number of people in prison. (See Voter Information Guide, Gen. Elec. (Nov. 4, 2014) argument in favor of Prop. 47, p. 38.) Imposing parole in Proposition 47 resentencing cases will no doubt result in some defendants returning to prison for violating the terms of their parole. But in enacting Proposition 47, the voters also expressed concern for public safety and the need to keep dangerous criminals off the streets. (*Ibid.*) Requiring defendants who are on parole or PRCS to remain under parole supervision following resentencing is an entirely reasonable method of helping ensure that only nondangerous defendants are able to benefit from the procedures contained in Proposition 47.

For all of these reasons, we uphold the trial court's decision to impose a parole period in conjunction with appellant's resentencing.

DISPOSITION

The postjudgment order is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.