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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.

CHRISTOPHER WAYNE CURTIS

Defendant and Appellant.

G052151

(Super. Ct. No. 02NF3904)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jonathan S. Fish, Judge. Affirmed.

Lewis A. Wenzell, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Appellant Christopher Wayne Curtis was a wanted parole violator when sheriff's deputies spotted him at an Anaheim motel in the fall of 2002.¹ They watched him take some items into one of the rooms and then depart the area in a rental car. The deputies tried to pull him over, but he led them on a high-speed chase before abandoning his car and fleeing on foot. During *that* pursuit, he dropped a loaded handgun and several baggies of drugs. When finally apprehended, he had a "large amount" of cash, and in his car officers found false identification, credit cards, burglary tools and various indicia of drug sales. Back at his motel room, they found methamphetamine and drug paraphernalia, as well as mail and personal documents belonging to mail and identity theft victims.

Curtis was charged with transporting methamphetamine, possessing it for sale, possessing a firearm while a felon, evading the police, and eight counts of receiving stolen property. With respect to the drug charges, it was alleged he possessed more than 28.5 grams of methamphetamine and was personally armed. The information also alleged Curtis suffered two strike convictions in 1996 and served a prior prison term.

Curtis pleaded guilty to the charges and admitted the allegations. In so doing, he acknowledged he could be sentenced to over 100 years in prison. He also invited the court to dismiss one of his strikes and sentence him as a second-strike offender. The court did dismiss one of the strikes, but only with respect to counts 3 through 12. It applied both strikes to the drug counts, resulting in a base term of 25 years to life. It added three years for the gun enhancement and ran the remaining counts concurrently, bringing Curtis' sentence to 28 years to life. On appeal, we affirmed that conviction, rejecting Curtis's complaints about his sentencing.

In December of 2014, he filed an application to have his felony convictions reduced to misdemeanors pursuant to Penal Code section 1170.18 subdivision (f), a

¹ As will be discussed, this is the second time this case has been before us. The ensuing statement of the facts and history of the case is primarily derived from our unpublished opinion in 2005.

motion for what is generally referred to as Proposition 47 relief. The trial court denied the motion and Curtis appealed.

We appointed counsel to represent him on that appeal. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are largely irrelevant because the argument is solely directed at Curtis' plea and the application to it of Pen. Code, § 1170.18). Counsel did not argue against his client, but advised us there were no issues to argue on his behalf. Curtis was invited to express his own objections to the proceedings against him, but did not. Under the law, this put the onus on us to review the record and see if *we* could find any issues that might result in some kind of amelioration of Curtis' lot. (*People v. Wende* (1979) 25 Cal.3d 436.) It should be emphasized that our search was not for issues upon which Curtis *would* prevail, but only issues upon which he *might possibly* prevail.

We have examined the record and found no arguable issue. Curtis sought to have his transportation of methamphetamine and his eight receiving stolen property convictions reduced to misdemeanors. He was granted relief under his petition as to all the receiving stolen property offenses, but not the transportation of methamphetamine count (count 1, Health & Saf. Code, § 11379). Curtis withdrew his application for relief as to that count, impliedly recognizing that Health and Safety Code section 1170.18 does not provide any possible relief for anyone convicted of that crime. It is not one of the enumerated offenses for which relief can be sought. As to the receiving stolen property convictions, they were reduced to misdemeanors and punishment reduced concomitantly.

Curtis' notice of appeal indicates that he wanted to argue that the court, having reduced eight counts to misdemeanors, had to adjust his sentence. But that is not the case. Curtis got 25 years to life for transportation of methamphetamine with two prior "strike" offenses. The court added 3 years for the gun enhancement. All the other counts – including the ones since reduced to misdemeanors – were run concurrently. They had no effect on his 28 years to life sentence and will now run concurrently just as

they did when they were felonies; the only difference will be that the time on those will run out much earlier than it would have before.

That ruling appears to us – as it did to appellate counsel – unassailable. Proposition 47 simply does not provide for reduction of charges for transportation of methamphetamine for sale, and Curtis was given all the relief he could receive on the eight receiving charges.

The order is therefore affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.