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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.

CHARLES GLENN PRINCLER,

Defendant and Appellant.

G052277

(Super. Ct. No. 93WF0169)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Edward Hall, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Richard Jay Moller, 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, Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Charles Glenn Princler appeals from an order denying his motion to withdraw (Pen. Code, § 1203.4; all statutory citations are to the Penal Code) his 1993 guilty plea to a violation of lewd acts on a child (§ 288, subd. (c)). The trial court denied his motion because section 1203.4, as amended in 1997, prohibits relief for violations of section 288. Princler contends section 1203.4 relief was an implied term of his plea bargain that had to be honored despite the 1997 amendment. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In March 1993, Princler pleaded guilty to a first amended complaint alleging he committed a lewd act on a child 14 years of age (§ 288, subd. (c) [count 1])¹ and first degree burglary (§§ 459, 460.1, 461.1 [count 2]). The trial court suspended imposition of sentence and placed Princler on probation for five years. In February 2014, Princler moved to withdraw his guilty plea under section 1203.4. In June 2014, the court granted the motion to withdraw his plea to the burglary offense (count 2) and dismissed the charge. In July 2015, the court reduced the felony conviction of section 288, subdivision (c), to a misdemeanor (§ 17, subd. (b)), but declined to dismiss it under section 1203.4.

¹ At the time of the offense in February 1993, section 288 provided in relevant part: “(c) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, shall be guilty of a public offense and shall be imprisoned in the state prison for one, two, or three years, or by imprisonment in the county jail for not more than one year.” Subdivision (a) prohibited willfully lewd or lascivious acts “upon or with the body, or any part or member thereof, of a child . . . with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the child”

II

DISCUSSION

The Trial Court Did Not Err by Denying Princler's Motion to Withdraw His Guilty Plea

Section 1203.4 provides in relevant part: “(a)(1) In any case in which a defendant has fulfilled the conditions of probation . . . , the defendant shall . . . be permitted by the court to withdraw his . . . plea of guilty . . . and enter a plea of not guilty; . . . and . . . the court shall thereupon dismiss the accusations or information against the defendant” In 1997, the Legislature added subdivision (b) to section 1203.4, which provides in relevant part: “Subdivision (a) of this section does not apply . . . to any violation of . . . Section 288”

Princler contends he was eligible to have his 1993 conviction for a violation of section 288 dismissed under section 1203.4, notwithstanding the 1997 amendment prohibiting relief. In *People v. Arata* (2007) 151 Cal.App.4th 778 (*Arata*), the defendant pleaded guilty to committing a lewd and lascivious act on a 13-year-old child (§ 288, subd. (a)) in 1996. His lawyer stated the defendant would enter a plea of guilty “with the understanding that the Court would order a Penal Code section 288.1 report. There would be no State Prison at the outset as a promise.” At sentencing, the trial court placed the defendant on probation for five years. In 2005, the defendant moved to withdraw his guilty plea and dismiss the charge under to section 1203.4. In a declaration, the defendant asserted his attorney told him if he pleaded guilty and successfully completed probation, he would be able to withdraw his plea and have the case dismissed under section 1203.4. The trial court denied the motion because section 1203.4 as amended precluded relief.

Arata concluded the trial court violated the defendant's due process rights when it denied the motion because the plea bargain implicitly included the promise of section 1203.4 relief as part of probation, and denial of section 1203.4 relief would significantly vary the terms of the bargain because all agreed it ““was not a state prison

case” and “the act of clemency in granting probation would be significantly diminished if not accompanied by the eventual reward of section 1203.4 relief.” (*Arata, supra*, 151 Cal.App.4th at p. 788.)

Arata distinguished *People v. Acuna* (2000) 77 Cal.App.4th 1056, which upheld denying section 1203.4 relief to a person who pleaded guilty to violating section 288 before the amendment to section 1203.4. *Acuna* rejected the defendant’s argument that application of the amended statute denied the defendant the benefit of his plea bargain. It found expungement was not an express provision of his plea bargain and the defendant still received a substantial benefit from the plea bargain by avoiding a prison sentence. (*Id.* at p. 1062 [ban on expungement of convictions under section 288 is consistent with the policy of public disclosure; public safety enhanced if those having been convicted of child molestation are not able to truthfully represent that they have no such conviction].)

In *Doe v. Harris* (2013) 57 Cal.4th 64 (*Doe*), the court held requiring a sex offender to comply with retroactive postconviction amendments to California’s Sex Offender Registration Act (§ 290 et seq.) did not violate his plea agreement. *Doe* declared the general rule in California is that a plea agreement incorporates and contemplates ““not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy.”“ (*Doe*, at p. 66; see *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1070.) *Doe* noted prosecutorial and judicial silence on the possibility the Legislature might amend the statutory consequence of a conviction ordinarily does not allow courts to interpret the plea agreement as an implied promise the defendant will not be subject to the amended law. (*Doe*, at p. 71.)

Doe noted *Acuna* was “consistent with a rule that the absence of any discussion during plea negotiations of the possibility of changes to the law does not translate into an agreement the defendant will be unaffected by statutory amendments.”

(*Doe, supra*, 57 Cal.4th at p. 72.) *Doe* distinguished *Arata*: “[T]he parties understood that the defendant’s decision to plead guilty was motivated by a specific statutory benefit available only to persons sentenced to probation, and thus had implicitly agreed the defendant would receive that benefit. [Citations.] We are not called upon here to review the merits of the court’s reasoning, as the situation here is not the same.” (*Doe*, at p. 73; see *People v. Smith* (2014) 227 Cal.App.4th 717, 731 [citing *Doe*, “a probationer’s entitlement to relief under section 1203.4 is not frozen at the time of the probationary grant but is subject to subsequent legislative amendments to the statute”].)

Here, section 1203.4 expungement was not an express provision of Princler’s plea bargain. The guilty plea form provides Princler understood “it is absolutely necessary all plea agreements, promises of a particular sentences or sentence recommendations be completely disclosed to the court on this form.” He acknowledged on the form, and later in open court, no one had made “any promises to [him] except as set out on this form in order to convince [him] to plead guilty.” Unlike the defendant in *Arata*, Princler did not assert his attorney advised him he would be able to withdraw his plea and have the case dismissed under section 1203.4 if he pleaded guilty and successfully completed probation. There is no evidence the parties understood Princler’s decision to plead guilty was motivated by the section 1203.4 benefit or agreed he would receive that benefit. Significantly, Princler’s plea form reflects he faced a six-year, eight-month prison term. Nothing in the record suggests this was not a state prison case. As in *Acuna*, Princler received a substantial benefit from the plea bargain by avoiding a prison sentence. Denial of section 1203.4 relief did not violate Princler’s plea bargain and accordingly did not violate his constitutional rights.

III
DISPOSITION

The order is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.