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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN GUANA MANCILLAS,

Defendant and Appellant.

H043072

(Monterey County

Super. Ct. No. SS121630A)

In 2012, defendant Benjamin Guana Mancillas pleaded nolo contendere to a count of felony grand theft (Pen. Code, § 487).<sup>1</sup> He was placed on formal probation for a period of three years. In 2015, defendant admitted he violated his probation. He also petitioned the court under section 1170.18, enacted by Proposition 47, seeking to have his conviction of grand theft reduced to a misdemeanor. The trial court revoked defendant's probation and denied his petition for resentencing after giving him an opportunity to withdraw his plea on the basis that granting the petition would improperly deny the People the benefit of the negotiated plea bargain. The court thereafter reinstated defendant's probation on the same terms and conditions as before. On appeal, defendant argues the court's denial of his petition for resentencing was erroneous. For the reasons set forth below, we agree. Thus, we reverse the order denying defendant's petition for resentencing and remand the matter back to the trial court so it may consider defendant's petition on its merits.

<sup>1</sup> Unspecified statutory references are to the Penal Code.

## BACKGROUND

On August 23, 2012, defendant approached the victim, who was sitting in a parked car.<sup>2</sup> Defendant demanded money from the victim. The victim was fearful that defendant was going to punch him, so he gave defendant \$65. Afterwards, the victim's girlfriend pursued defendant and asked him to give her the money back. The girlfriend managed to get \$38 back from defendant.

The following week, defendant was charged by complaint with second degree robbery (§ 211) and attempted robbery (§§ 664, 211). On September 4, 2012, the complaint was amended to add a count of felony grand theft (§ 487, subd. (c)). Defendant pleaded nolo contendere to the count of felony grand theft in exchange for probation and dismissal of the other two counts. On October 2, 2012, the trial court suspended imposition of sentence and placed defendant on three years' formal probation.

On January 10, 2013, the probation department filed a notice of violation of probation alleging that defendant had failed to report to the probation department after being released from county jail. On September 9, 2015, defendant was arraigned on his probation violation. The following week, defendant admitted the probation violation. The trial court revoked his probation.

On October 26, 2015, defendant requested his felony conviction for grand theft be reduced to a misdemeanor under section 1170.18, subdivision (a). The People opposed reducing the felony to a misdemeanor, arguing that granting defendant's petition would deprive the People of the benefit of the negotiated plea bargain.

On November 12, 2015, the trial court heard argument on defendant's Proposition 47 petition. During the hearing, the trial court indicated it would condition

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<sup>2</sup> Since defendant pleaded nolo contendere, we derive the facts from the probation officer's report, which was based on a report prepared by the Salinas Police Department.

its consideration of defendant's petition on if defendant withdrew his plea.<sup>3</sup> Defendant chose not to withdraw his plea and reiterated that he wanted the court to grant his Proposition 47 petition. The trial court denied defendant's petition, stating it "was following *People v. Collins* in the reasoning in the decision I gave both counsel, and *People v. Harris*."<sup>4</sup> The trial court then reinstated probation on the same terms and conditions as before.

## DISCUSSION

On appeal, defendant argues the trial court erred when it denied his petition for resentencing on the basis that his conviction resulted from a negotiated plea bargain. As we explain below, we agree with defendant.

### 1. *Overview of Proposition 47 and the Standard of Review*

Section 1170.18 was enacted by Proposition 47, the Safe Neighborhoods and Schools Act, in November 2014. Section 1170.18, subdivision (a), states in pertinent

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<sup>3</sup> The following colloquy took place between the trial court and defendant's counsel:

"THE COURT: . . . I think the Court gave a tentative which indicated the defendant can withdraw his plea. I think the People wanted to reinstate the original charges, and he's pending a probation violation as well. [¶] . . . [¶]

"THE COURT: . . . [W]hat does your client wish to do at this time?

"[DEFENSE COUNSEL]: Well, I don't think my client wishes to withdraw his plea. He would ask the Court to grant the motion that's been filed. If the Court's not willing to do that, I do believe the People have asked the Court to vacate the plea. I would submit to the Court I don't think that's an appropriate manner in which to proceed.

"THE COURT: I'll simply deny the Prop 47 petition on the grounds I've stated. But with that, it's up to your client whether he wishes to pursue any further relief under the statute, or simply we'll just go forward now on the violation matter, set a hearing if he wishes to have a hearing."

<sup>4</sup> The "decision" the trial court is referring to is not included in the record on appeal. Presumably, the trial court's reference to *People v. Collins* was to *People v. Collins* (1978) 21 Cal.3d 208 (*Collins*), and its reference to *People v. Harris* was to *Harris v. Superior Court* (2015) 242 Cal.App.4th 244 (review granted Feb. 24, 2016, S231489).

part: “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 . . . Section . . . 490.2 . . . of the Penal Code, as those sections have been amended or added by this act.” A person “currently serving a sentence” (*ibid.*) includes individuals on probation. (*People v. Garcia* (2016) 245 Cal.App.4th 555, 558-559.)

Whether the trial court erred when it determined that defendant was not entitled to Proposition 47 relief because his conviction was obtained by plea is a question of law that we review de novo. (See *People v. Ravaux* (2006) 142 Cal.App.4th 914, 919 [statutory interpretation is a question of a law an appellate court reviews de novo].) “When we interpret an initiative, we apply the same principles governing statutory construction. We first consider the initiative’s language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters’ intent and understanding of a ballot measure.” (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.)

## 2. *Denial of Defendant's Proposition 47 Petition for Resentencing*

Defendant argues the trial court erred when it denied his petition for resentencing on the basis that granting the petition would deprive the People of the benefit of the plea bargain.<sup>5</sup> We agree.

First, we note the plain language of section 1170.18, subdivision (a) provides that those who are “currently serving a sentence for a conviction, *whether by trial or plea*” (italics added) for felony or felonies that would have been misdemeanors under Proposition 47 are eligible for relief. In other words, Proposition 47 plainly applies to those who are serving convictions obtained by negotiated plea agreements. (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 652 [“nothing in section 1170.18 reflects an intent to disqualify a petitioner because the conviction was obtained by plea agreement”].)

The circumstances of defendant's offense also qualify him for relief. Section 490.2, subdivision (a), enacted by Proposition 47, states: “Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except” in certain circumstances, none of which are present here. Defendant was convicted of grand theft after he took approximately \$65 from the victim, an amount less than \$950. And there is nothing in the record to indicate he is otherwise ineligible for relief under section 1170.18, subdivision (a). Therefore, the trial court should have considered his petition and resentenced him to a misdemeanor unless it found he posed an unreasonable risk of danger to public safety. (§ 1170.18, subd. (a).)

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<sup>5</sup> The California Supreme Court is presently considering this very issue. (*Harris v. Superior Court* (2015) 242 Cal.App.4th 244, review granted Feb. 24, 2016, S231489.)

Additionally, we find the court erred when it declined to consider defendant's Proposition 47 petition for resentencing. Granting a Proposition 47 petition does not deprive the People of the benefit of the bargain and does not permit the People to withdraw from a plea agreement. (*People v. Dunn* (2016) 248 Cal.App.4th 518, 532.) And the trial court should not have, as implied from the reporter's transcript of the hearing, premised the consideration of the Proposition 47 petition on defendant's withdrawal of his plea.

The People argue the basic principles underlying plea agreements allows the prosecution to restore dismissed charges if a defendant attempts to recall his sentence under Proposition 47. The People point out that the parties and the trial court may not unilaterally alter terms of a plea bargain. (*People v. Segura* (2008) 44 Cal.4th 921, 931.) A negotiated plea bargain is a form of contract, and once accepted by the court both the People and the defendant must abide by its terms. (*Id.* at pp. 930-931.)

The People's argument fails to take into consideration the fact that plea agreements can be affected by changes in the law. "That the parties enter into a plea agreement . . . does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them." (*Doe v. Harris* (2013) 57 Cal.4th 64, 66 (*Doe*)). "[T]he general rule in California is that plea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. As an adjunct to that rule, and consistent with established law holding that silence regarding a statutory consequence of a conviction does not generally translate into an implied promise the consequence will not attach, prosecutorial and judicial silence on the possibility the Legislature might amend a statutory consequence of a conviction should not ordinarily be interpreted to be an implied promise that the defendant will not be subject to the amended law." (*Id.* at p. 71, fn. omitted.) In other words, the fact that changes in the law may render the plea

disadvantageous to any of the parties does not violate the plea agreement. It also does not give the disadvantaged party the right to revoke the agreement.

The People argue that *Doe* is distinguishable and rely on *Collins, supra*, 21 Cal.3d 208 and *In re Blessing* (1982) 129 Cal.App.3d 1026 (*Blessing*). In *Collins*, the defendant was originally charged with 15 felony counts. (*Collins, supra*, at p. 211.) The defendant eventually pleaded guilty to a single count of nonforcible oral copulation, and the remaining 14 counts were dismissed. (*Ibid.*) After he entered his plea but before he was sentenced, the Legislature decriminalized nonforcible oral copulation. The defendant then objected to the court's authority to sentence him based on a statute that had since been repealed. (*Ibid.*) The trial court overruled the defendant's objection and sentenced him to 15 years in prison. (*Id.* at pp. 211-212.) On appeal, the defendant asked the Supreme Court not to reverse his conviction but to correct the sentence so that he would receive no penalty. (*Id.* at p. 214.) The *Collins* court declined to correct the sentence and instead reversed the defendant's conviction, remanding to give the People the opportunity to revive the previously dismissed counts. (*Id.* at p. 211.)

We find *Collins* to be distinguishable for multiple reasons. First, in *Collins*, the Legislature repealed the statute criminalizing the defendant's conduct before he was sentenced. In defendant's case, Proposition 47 was enacted by the electorate after defendant had already been sentenced. Additionally, *Collins* involved a statute that completely decriminalized the original criminal offense. The change in law in *Collins* completely invalidated the conviction and any punishment obtained through the plea bargain. In contrast, Proposition 47 does not decriminalize defendant's offense; it merely recategorizes the same crime committed by defendant as a misdemeanor. Proposition 47 does not completely deprive the People of the benefit of the plea bargain.

*Blessing, supra*, 129 Cal.App.3d 1026 is also distinguishable. In *Blessing*, the defendant was sentenced pursuant to a negotiated plea to a term of 16 and one-third years in prison, which included an eight month enhancement for personal firearm use for six of

the counts. (*Id.* at pp. 1028-1029.) Thereafter, the Supreme Court held that punishment for firearm use on consecutive subordinate offenses was not allowed. (*Id.* at p. 1029.) *Blessing* followed *Collins*, and allowed the People to withdraw from the plea and revive the dismissed counts if they so desired. (*Id.* at p. 1031.)

In *Blessing*, the change in the law that affected the defendant's sentence resulted from an intervening court decision, not a new law. (*Blessing, supra*, 129 Cal.App.3d at p. 1029.) As previously discussed, the Supreme Court has held in *Doe* that plea agreements are vulnerable to changes in public policy enacted by the Legislature or the electorate. (*Doe, supra*, 57 Cal.4th at pp. 69-70.) Thus, we do not find *Blessing* to be persuasive.

The People also rely on three other cases that we find to be distinguishable. First, the People cite to *In re Ricardo C.* (2013) 220 Cal.App.4th 688. There, the minor and the People agreed to a negotiated disposition where the minor was to be committed to the youthful offender program (YOP). (*Id.* at p. 694.) During sentencing, the court declined to place the minor to YOP and instead placed him in another program. The People requested to withdraw from the plea agreement, which the court denied. The appellate court held the trial court "could not proceed to apply and enforce certain parts of the plea bargain, while ignoring the provision that had been material to the People's agreement to the bargain." (*Id.* at p. 699.) The court was therefore "constrained to reject the plea bargain and to restore the parties to their former positions." (*Ibid.*)

The People also cite to *In re Travis J.* (2013) 222 Cal.App.4th 187. In *Travis J.*, as part of a plea agreement, the minor was committed to the division of juvenile justice. (*Id.* at p. 189.) The minor subsequently challenged the dispositional order on appeal, arguing he could not be committed to the division of juvenile justice by stipulation and the matter should be remanded for consideration of less restrictive alternatives. The *Travis J.* court cited to *Ricardo C.*, holding that a "plea agreement—whether in adult or juvenile court—cannot constrain the sentencing court's discretion if it ultimately finds

that the agreed-upon terms are unacceptable or inconsistent with the court's obligations.” (*Id.* at p. 198.) Further, the minor could not “seek to improve, on appeal, a bargain he struck in the trial court.” (*Ibid.*) The appellate court noted that if the court *did* fail to recognize its authority to reject a division of juvenile justice commitment for the minor, the remedy would be to allow the People to withdraw the plea agreement. (*Id.* at pp. 198-199.)

Unlike *Ricardo C.* and *Travis J.*, the trial court here was not attempting to accept or reject certain terms of a plea agreement. Furthermore, neither of these cases dealt with whether a plea agreement is invalidated by subsequent changes to the law. These cases therefore do not support the People's position.

Lastly, we find the People's reliance on *People v. Enlow* (1998) 64 Cal.App.4th 850 to be misplaced. In *Enlow*, the defendant agreed to a negotiated disposition which included an eight-year term of imprisonment under section 666.5. (*People v. Enlow, supra*, at p. 853.) On appeal, the defendant argued his sentence should be reduced, because the Legislature had since reduced the punishment under section 666.5 before his case became final. (*People v. Enlow, supra*, at p. 853.) The defendant had been sentenced under a 1993 version of the statute that was enacted as urgency legislation and included a sunset provision that would repeal the increased prison term and reinstate lesser penalties effective January 1, 1997. (*Id.* at p. 855.) The appellate court determined that due to the nature of the statute's enactment as urgency legislation, it was clear the legislative intent was for defendants who committed their crimes during the period of increased penalties to be punished pursuant to the increased penalties. (*Id.* at p. 858.) *Enlow* did not involve a plea agreement that was affected by subsequent statutory changes. It therefore has no bearing on defendant's case.

In sum, we adhere to the California Supreme Court's decision in *Doe, supra*, 57 Cal.4th 64. Absent some agreement to the contrary, the parties' plea agreement does not immunize them from future changes in the law. (*Id.* at p. 71.) There is nothing in the

record to indicate the parties had come to such an agreement, and the People do not argue that there was one. The court therefore erred by making its consideration of defendant's Proposition 47 petition contingent on defendant's agreement to withdraw from the plea agreement. Since the trial court declined to consider the petition on the merits, we reverse the order denying defendant's petition for resentencing and remand the matter to the trial court.

#### **DISPOSITION**

The order denying the petition for resentencing is reversed, and the matter is remanded to the trial court for a consideration of the merits of the petition.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Walsh, J.\*

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\* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.