Filed 10/1/19 P. v. Superior Court (A.I.) CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE COUNTY,

Respondent;

A.I.,

Real Party in Interest.

F079018

(Super. Ct. No. JJD068683)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Hugo J. Loza, Judge.

Tim Ward, District Attorney, Dan Underwood, Chief Deputy District Attorney, Cindy Underwood and Adam Clare, Deputy District Attorneys, for Petitioner.

No appearance for Respondent.

Lisa Bertolino, Public Defender, Thomas McGuire, Assistant Public Defender, and JudyAnne E. Rogado, Deputy Public Defender, for Real Party in Interest.

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SEE DISSENTING OPINION

This case concerns the validity of Senate Bill No. 1391 (2017-2018 Reg. Sess.) (Stats. 2018, ch. 1012, § 1, eff. Jan. 1, 2019) (Senate Bill No. 1391), which prohibits the transfer of 14- and 15-year-old offenders to criminal (adult) court in virtually all circumstances.[1] The District Attorney of Tulare County (the District Attorney) asks us to hold that Senate Bill No. 1391 is invalid, and issue a writ of mandate directing the superior court to vacate its dismissal order and reinstate the transfer petition by which the District Attorney seeks the transfer of real party in interest A.I. (A.I.) to criminal court. Because we conclude Senate Bill No. 1391 is valid, we deny the petition for writ of mandate.

PROCEDURAL HISTORY

On June 12, 2015, A.I., then 14 years old and an active member of a criminal street gang, shot and killed a man. He was directly charged, in criminal court, with first degree murder with the special circumstance that the murder was committed by an active participant in a criminal street gang (Pen. Code, §§ 187, 189, 190.2, subd. (a)(22); count 1) and gang conspiracy (*id.*, § 182.5; count 2). Enhancement allegations for personal and intentional use of a firearm by a principal (*id.*, § 12022.53, subds. (d), (e)(1)) were appended to both counts, while allegations of personal use of a firearm (*id.*, § 12022.5, subd. (a)) and commission of a felony for the benefit of a criminal street gang

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[1] "The juvenile court and the criminal court are divisions of the superior court, which has subject matter jurisdiction over criminal matters and civil matters, including juvenile proceedings. (See Cal. Const., art. VI, § 10.) When exercising the jurisdiction conferred by the juvenile court law, the superior court is designated as the juvenile court. (Welf. & Inst. Code, § 245.)" (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 548, fn. 3.) Accordingly, when we refer to the juvenile court or the criminal (adult) court, we are referring to the statutory authority of the particular division of the superior court, in a given case, to proceed under the juvenile court law or the law generally applicable in criminal actions. (See *In re Harris* (1993) 5 Cal.4th 813, 837.)

Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

(*id.*, § 186.22, subd. (b)(1)(C)) were also appended to count 1. On September 6, 2016, A.I. pled no contest to second degree murder, and admitted personal use of a firearm by a principal and the gang enhancement. On October 7, 2016, he was sentenced to 15 years to life for second degree murder, plus an additional consecutive term of 25 years to life for the firearm enhancement, for a total term of 40 years to life in prison. The gang enhancement was stayed.

On November 8, 2016, while A.I.'s appeal was pending, voters enacted Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Proposition 57 or the Act). It went into effect the next day. (See Cal. Const., art. II, § 10, former subd. (a).) In pertinent part, the Act eliminated a prosecutor's ability to directly file charges in criminal court against minors who were 14 years of age or older at the time of their alleged offenses, and instead required prosecutors to obtain juvenile court approval before prosecuting minors in criminal court.

The California Supreme Court subsequently held Proposition 57 applied retroactively to nonfinal cases. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303-304.) As a result, we conditionally reversed A.I.'s conviction and sentence and remanded the matter to the juvenile court with directions to, in pertinent part, conduct a juvenile fitness (transfer) hearing and either (1) treat the conviction as a juvenile adjudication, and impose an appropriate disposition, if it found it would not have transferred A.I. to a court of criminal jurisdiction; or (2) reinstate the conviction and sentence if it found it would have transferred A.I. to a court of criminal jurisdiction because he was not a fit and proper subject to be dealt with under the juvenile court law.

Remittitur issued on September 25, 2018. The next day, the District Attorney filed a juvenile wardship petition (§ 602) that alleged the same offenses and special allegations with which A.I. previously was charged in criminal court and requested transfer to a court of criminal jurisdiction.

While the transfer petition was pending, Senate Bill No. 1391 went into effect. The District Attorney then filed a motion to declare its amendments to section 707 invalid, while A.I. filed a motion to dismiss the transfer petition and set the matter for juvenile disposition.[2]

On January 28, 2019, a hearing was held on the constitutionality of Senate Bill No. 1391. Following argument and submission of additional materials, the court ruled Senate Bill No. 1391 was a valid amendment to Proposition 57, because it was consistent with and furthered the intent of the Act, that intent being to expand the opportunity of children eligible to receive rehabilitative services within the juvenile court system. Accordingly, the court granted A.I.'s motion to dismiss the transfer petition and ordered the matter set for a juvenile disposition, as directed by this court's remittitur.

The District Attorney petitioned this court for a writ of mandate. We stayed the juvenile court's dispositional hearing and issued an order to show cause.

DISCUSSION

The District Attorney contends Senate Bill No. 1391 is invalid for a number of reasons. In *People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360, 365, 378, petition for review pending, petition filed September 13, 2019 (*T.D.*), we concluded Senate Bill No. 1391 validly amended Proposition 57. In so doing, we rejected the notion the drafting history of the Act (which, in its original version, established 16 years old as the minimum age at which juveniles could be transferred to criminal court) showed Senate Bill No. 1391 was an unconstitutional amendment to the Act. (*T.D.*, *supra*, at pp. 376-377.)[3] We also rejected speculation such a finding could lead to the potential

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[2] A.I. also filed a response to the District Attorney's motion.

[3] Because the drafting changes were made prior to the Act's submission to voters, we were unable to conclude voters were aware of, and so necessarily rejected, the measure's original provisions. (*T.D.*, *supra*, 38 Cal.App.5th at pp. 376-377.) In the present case, the District Attorney claims the drafting history was indeed provided to voters, because *Brown v. Superior Court* (2016) 63 Cal.4th 335, which described that

nullification of the Act by enabling the Legislature to eliminate the transfer of any juvenile offender to criminal court. (*T.D.*, *supra*, at pp. 377-378.) In *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, 386, 389-390, petition for review pending, petition filed September 5, 2019 (*I.R.*), we rejected the additional claim that Senate Bill No. 1391 is an unconstitutional amendment of Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998 (Proposition 21).

We see no reason to revisit our analyses and conclusions in the foregoing cases. This disposes of most of the District Attorney's arguments. He further contends, however, that Senate Bill No. 1391 indirectly unconstitutionally amended the three strikes law by narrowing the category of individuals subject to that law.[4]

The legislative version of the three strikes law went into effect on March 7, 1994. (Stats. 1994, ch. 12, § 1.) In pertinent part, it added subdivision (d)(3) to Penal Code section 667. This subdivision at all times has provided that a prior juvenile adjudication constitutes a strike if the juvenile was 16 years of age or older when he or she committed the offense; the offense is listed in subdivision (b) of section 707 or is a violent or serious felony, as defined in Penal Code sections 667.5, subdivision (c) and 1192.7, subdivision (c), respectively, or, if from another jurisdiction, includes all the elements of the particular felony as defined in those sections; the juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law; and the juvenile was adjudged a ward of the juvenile court because he or she committed an offense listed in section 707, subdivision (b).

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history, was cited in the ballot pamphlet. (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Prop. 57, p. 59.) We remain unconvinced. *Brown* was mentioned one time, and only in connection with the parole provisions of the Act.

4 In his pleadings, the District Attorney referred to Proposition 8, The Victims' Bill of Rights enacted by voters in 1982, as the genesis of the three strikes law. As he acknowledged at oral argument, this was incorrect.

The initiative version of the three strikes law was approved by voters at the November 8, 1994 General Election as Proposition 184. It added section 1170.12 to the Penal Code. Subdivision (b)(3) of that statute addresses prior juvenile adjudications in the same manner as the legislative version of the three strikes law. Uncodified section 4 of Proposition 184 provided: "The provisions of this measure shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors." (Ballot Pamp., Gen. Elec. (Nov. 8, 1994) text of Prop. 184, p. 65, at <https://repository.uchastings.edu/ca_ballot_props/1101> [as of Oct. 1, 2019].)

Neither version of the three strikes law addressed juvenile court law or juvenile court transfer proceedings. More importantly, and contrary to the District Attorney's assertion, neither legislators nor voters could have intended that 14- and 15-year-old offenders would be subject to the three strikes law, because at the time both versions of that law were enacted, juveniles under 16 years of age could not be tried in criminal court *for any offense*. (See former § 707, as amended by Stats. 1993, ch. 610, § 30 & Stats. 1993, ch. 611, § 34, both eff. Oct. 1, 1993.) It was not until January 1, 1995, that Assembly Bill No. 560 (Stats. 1994, ch. 453, § 9.5) took effect, permitting the transfer of 14 and 15 year olds to criminal court under limited circumstances. (See § 707, former subds. (d), (e).)

We recognize that "[t]he enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted" (*People v. Weidert* (1985) 39 Cal.3d 836, 844), "and to have enacted or amended a statute in light thereof" (*People v. Harrison* (1989) 48 Cal.3d 321, 329). We know of no authority extending this principle to laws not yet in effect when legislation is enacted or amended, particularly when that legislation is at most tangentially related to the subject of the legislation that is not yet in effect.

The District Attorney recognizes Senate Bill No. 1391 did not directly amend the provisions of the three strikes law. Relying primarily on *People v. Kelly* (2010) 47 Cal.4th 1008, 1012 and *People v. Delgado* (2013) 214 Cal.App.4th 914, 916, 918-919, he claims it nevertheless is unconstitutional because it burdens or frustrates a purpose of that law by preventing offenders who commit strike offenses from obtaining strike priors if they reoffend. He says the subsequent Proposition 21 expanded the reach of the three strikes law by permitting juveniles — including 14 and 15 year olds — against whom charges were directly filed in criminal court to be "convicted" within the meaning of the three strikes law. Although Proposition 57 narrowed the category of juveniles falling under the three strikes law by requiring a transfer hearing before trial in criminal court is allowed, the argument runs, it still permitted 14- and 15-year-old offenders to obtain strike convictions. Senate Bill No. 1391 took away this possibility.

The District Attorney's position fails at its premise. The purpose of the three strikes law was not to draw 14 and 15 year olds into the criminal (adult) justice system. We know this because it did not do so. Moreover, as we explained in *I.R.*, *supra*, 38 Cal.App.5th at page 390, the authority to send 14 and 15 year olds into the criminal system was not granted by Proposition 21, but rather was a result of the earlier enactment of Assembly Bill No. 560. (See § 707, former subds. (d), (e), as amended by Stats. 1994, ch. 453, § 9.5, p. 2523.) Given the express language of Penal Code sections 667, subdivision (d)(3) and 1170.12, subdivision (b)(3), neither of which was amended by Proposition 21, we reject the District Attorney's argument.

Senate Bill No. 1391 constitutionally amended Proposition 57. It did not burden or frustrate the purpose of the three strikes law.

DISPOSITION

The order to show cause previously issued is discharged, and the petition for writ of mandate is denied. The stay issued by this court on April 2, 2019, shall remain in effect only until this opinion becomes final in all courts in this state or the California

Supreme Court grants a hearing, whichever shall first occur; thereafter said order is vacated and said stay is dissolved.

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DETJEN, J.

I CONCUR:

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PEÑA, J.

Poochigian, Acting P.J., dissenting.

I respectfully dissent for the reasons set forth in my dissenting opinion in *People v. Superior Court* (*T.D.*) (2019) 38 Cal.App.5th 360, 378–382 (dis. opn. of Poochigian, J.), petition for review pending, petition filed September 13, 2019.

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POOCHIGIAN, Acting P.J.

SEE DISSENTING OPINION