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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.J.,

Defendant and Appellant.

E079207

(Super.Ct.No. J285625)

OPINION

APPEAL from the Superior Court of San Bernardino County. Charles J. Umeda, Judge. Conditionally reversed and remanded with directions.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Collette C. Cavalier and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court granted plaintiff and respondent's, the People, motion to transfer defendant and appellant, K.J. (minor), from the juvenile to the criminal court. Minor argues we should reverse the order and remand the matter so the juvenile court can reconsider its ruling in light of a recent ameliorative change to the law, which changes the People's burden of proof from a preponderance of the evidence to clear and convincing evidence.¹ The People agree with minor. We agree with the parties; we reverse the order and remand the matter.

I. PROCEDURAL BACKGROUND²

On June 18, 2020, the People filed a Welfare and Institutions Code section 602, subdivision (a), juvenile wardship petition alleging that defendant committed possession of a firearm by a minor (Pen. Code, § 29610, count 1), participation in a criminal street gang (Pen. Code, § 186.22, subd. (a), count 2), and two counts of carrying a concealed weapon (Pen. Code, § 25400, subd. (a)(2), counts 3 and 4). On July 31, 2020, defendant admitted the count 1 allegation. The court declared minor a ward of the court, dismissed the remaining counts, and released minor to his mother on various terms and conditions.

On August 27, 2020, the People filed a subsequent petition alleging that minor committed possession of a firearm by a minor (Pen. Code, § 29610, count 1) and carrying

¹ Minor additionally contends the juvenile court abused its discretion in granting the People's motion. We decline to address the issue because we reverse and remand the matter on the former ground.

² The facts are irrelevant to the issue resolved by this appeal.

a loaded firearm (Pen. Code, § 25850, subd. (a), count 2). Minor admitted the count 1 allegation; the court dismissed the count 2 allegation on the People’s motion.

On September 30, 2020, the day set for the contested dispositional hearing on the subsequent petition, the People filed a second subsequent petition alleging that minor committed second degree robbery (Pen. Code, § 211, count 1). Pursuant to Welfare and Institutions Code section 707, subdivision (a)(1), the People requested a transfer hearing to determine whether minor should be transferred to a court of criminal jurisdiction. On June 15, 2021, the People filed a third subsequent petition alleging that minor committed murder (Pen. Code, § 187, subd. (a), count 1) and attempted murder (Pen. Code, §§ 664, 187, subd. (a), count 2).

On February 22, 25, March 10, 18, April 14, 29, and May 20, 2022, the juvenile court held the contested transfer hearing. On May 25, 2022, the court granted the People’s motion to transfer minor to the criminal court.

II. DISCUSSION

In September 2022, while minor’s appeal was pending, the Governor signed Assembly Bill No. 2361 (2021-2022 Reg. Sess.), effective January 1, 2023. (Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600, subd. (a).) The bill amends Welfare and Institutions Code section 707, in pertinent part, to increase the prosecution’s burden to prove the propriety of a transfer, from juvenile to criminal court, “by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.” (Welf. & Inst. Code, § 707, subd. (a)(3); Stats. 2022, ch. 330, § 1.)

Defendant contends that since his judgment will not be final by the time Assembly Bill No. 2361 takes effect, it should apply to him retroactively. The People concede the issue. We agree.

Laws that allow the possibility of being treated as a juvenile in juvenile court, rather than being tried and sentenced as an adult, apply retroactively to all nonfinal judgments. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303-304.)

Here, in the court’s eight-page, written ruling issued on May 25, 2022, it noted: “The standard of proof is preponderance of the evidence.” Thus, the juvenile court’s order granting the matter must be reversed, and the matter remanded for the court to apply the elevated burden of proof.

III. DISPOSITION

We conditionally reverse the juvenile court’s order transferring minor to a court of criminal jurisdiction. We remand the matter with directions to hold a new transfer hearing under Welfare and Institutions Code section 707 as amended by Assembly Bill No. 2361.

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McKINSTER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.