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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.P., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.P.,

Defendant and Appellant.

E079615

(Super. Ct. No. INJ1900446)

OPINION

APPEAL from the Superior Court of Riverside County. Emily A. Benjamini,
Judge. Reversed with directions.

Laura Arnold, 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, Arlene A. Sevidal and Susan
Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

In this expedited appeal pursuant to Welfare and Institutions Code¹ section 801, defendant and appellant C.P. (minor) appeals from the juvenile court's order transferring his case to a court of criminal jurisdiction. On appeal, minor argues the order transferring the case must be reversed and the matter remanded for redetermination, applying the heightened burden of proof, under Assembly Bill No. 2361. He also asserts Assembly Bill No. 2361 applies retroactively. The People agree with minor. We agree with the parties and conditionally reverse and remand the matter so the juvenile court can reconsider its ruling in light of recent ameliorative changes to the law.

II.

PROCEDURAL BACKGROUND

On August 24, 2021, a petition was filed alleging minor committed attempted murder (Pen. Code, §§ 664/187, subd. (a)), carried a concealed loaded firearm in a vehicle while being an active participant in a criminal street gang (Pen. Code, § 25850, subd. (c)(3)), and being an active participant in a criminal street gang (Pen. Code, § 186.22, subd. (a)). The petition further alleged that, in the commission of the attempted murder, minor was a principal in the crime who personally and intentionally discharged a

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

firearm causing death (Pen. Code § 12022.53, subds. (d), (e)) and committed the offense for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(5)).

Minor was 17 years old at the time of his alleged offenses. On August 27, 2021, the People filed a motion to transfer minor from the juvenile court to a court of criminal jurisdiction pursuant to section 707, subdivision (a)(1).

Following a transfer hearing, the juvenile court issued a written order on August 3, 2022, granting the People's motion to transfer minor from juvenile court to a court of criminal jurisdiction. In its order, the court found that the People had met their burden of proof by the preponderance of the evidence that minor "is not suitable for and cannot be rehabilitated within the juvenile court system" and that minor "should be transferred to the jurisdiction of the criminal court." The court noted that it had considered the five criteria listed in section 707, carefully weighed the options, and considered the totality of the circumstances in this case. Minor timely appealed from the juvenile court's August 3, 2022 order.

In September 2022, the Governor signed Assembly Bill No. 2361 (2021-2022 Reg. Sess.). Effective January 1, 2023, Assembly Bill No. 2361 will amend section 707 to require a juvenile court transferring a minor to adult court to apply the higher standard of proof of clear and convincing evidence to the ultimate finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court. Additionally, the new law requires the juvenile court to state in an order the reasons

supporting the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

III.

DISCUSSION

Minor argues Assembly Bill No. 2361’s amendments to section 707 apply to him retroactively under *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) and *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, and therefore the matter should be remanded to reconsider the transfer order. The People agree that Assembly Bill No. 2361’s changes to section 707 will apply retroactively to minor and that the proper remedy is to conditionally reverse the transfer order and remand the matter to the juvenile court with directions to conduct a new transfer hearing applying the new law.

Section 707 governs the procedures for transferring a minor from juvenile court to a court of criminal jurisdiction. Assembly Bill No. 2361 amends section 707 in order to, in part, increase the prosecution’s burden to prove that such a transfer is appropriate. Specifically, amended section 707 will require that “[i]n order to find that the minor should be transferred to a court of criminal jurisdiction, the court shall find by *clear and convincing evidence* that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.” (Stats. 2022, ch. 330, § 1., italics added.) Prior to Assembly Bill No. 2361, the prosecution had the burden of establishing by a *preponderance of the evidence* that the minor was not suitable for rehabilitation under the juvenile court system. (*Kevin P. v. Superior Court* (2020) 57 Cal.App.5th 173, 186.)

Assembly Bill No. 2361 also requires that a juvenile court’s on-the-record explanation for any decision to transfer “include the reasons supporting the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.” (Assembly Bill No. 2361.) These amendments will go into effect on January 1, 2023. (Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600, subd. (a).)

In general, ameliorative criminal legislation applies to all non-final judgments. (See *Estrada, supra*, 63 Cal.2d 740.) Specifically, in *Estrada, supra*, 63 Cal.2d 740, the California Supreme Court held that, absent evidence of a contrary legislative intent, an amendment to a statute that reduces the punishment for a crime applies retroactively to any case in which the judgment is not final before the amendment’s operative date. (*Id.* at p. 742; see *Lara, supra*, 4 Cal.5th at pp. 306-308 [discussing *Estrada*].)

In *Lara, supra*, 4 Cal.5th 299, our Supreme Court considered whether this general principle applied to Proposition 57, which prohibited prosecutors from charging juveniles with crimes directly in adult court and placed the burden of proof on prosecutors at transfer hearings. (*Id.* at p. 303.) The court concluded that while “*Estrada* is not directly on point; . . . its rationale does apply.” (*Ibid.*) The court reasoned that “[t]he possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment,” and concluded “[f]or this reason, *Estrada*’s inference of retroactivity applies.” (*Ibid.*) As such, *Lara* concluded that Proposition 57 “applies to all juveniles

charged directly in adult court whose judgment was not final at the time it was enacted.”
(*Id.* at p. 304.)

The reasonings in *Estrada* and *Lara* similarly applies. Like Proposition 57, Assembly Bill No. 2361 raises the burden of proof for transferring a juvenile to adult criminal court, among other changes. While Assembly Bill No. 2361 does not reduce the punishment for a crime, it heightens the prosecution’s burden of proof at a transfer hearing, thereby increasing the possibility of treatment in the juvenile court and reducing the possible punishment for juveniles. Thus, Assembly Bill No. 2361, like Proposition 57, “reduces the possible punishment for a class of persons, namely juveniles.” (*Lara, supra*, 4 Cal.5th at p. 303.) The presumption of retroactivity “““applies to any such proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it.””” (*People v. McKenzie* (2020) 9 Cal.5th 40, 45.) Under this definition, this case will not become final until after Assembly Bill No. 2361 goes into effect on January 1, 2023. Minor is therefore entitled to Assembly Bill No. 2361’s ameliorative benefits.

Accordingly, we reverse the juvenile court’s order transferring this case to a court of criminal jurisdiction and remand so the juvenile court can give minor the benefit of the ameliorative changes in Assembly Bill No. 2361.

IV.

DISPOSITION

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

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.