Filed 11/26/02 P. v. Chacon CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW CHACON,

Defendant and Appellant.

F038393

(Super. Ct. No. 80653)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Coleen W. Ryan and Clarence Westra, Jr., Judges.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Louis M. Vasquez and Kathleen A. McGurty, Deputy Attorneys General, for Plaintiff and Respondent.

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[*]Before Dibiaso, Acting P.J., Vartabedian, J. and Gomes, J.

FACTUAL AND PROCEDURAL HISTORY

The day after 17-year-old Matthew Chacon cared for his three-month-old twin daughters, the twins' mother and grandmother observed medical symptoms that led to a Proposition 21[1] "discretionary direct file" pursuant to Welfare and Institutions Code section 707, subdivision (d)(1). The district attorney charged him with two counts of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)), two counts of willful cruelty to a child under circumstances likely to produce great bodily injury (Pen. Code, § 273a), and two counts of torture (Pen. Code, § 206).

Before trial, Chacon filed a Penal Code section 995 motion to dismiss on the ground that Proposition 21 violated the single-subject initiative rule. (Cal. Const., art. II, § 8, subd. (d).) The prosecutor opposed, and the Honorable Coleen W. Ryan denied, the motion. On the first day of trial, arguing that he was not properly before the court for a criminal trial, he made a motion to dismiss. As before, the prosecutor opposed, and the Honorable Clarence Westra, Jr., denied, the motion.

A jury found Chacon guilty of two counts of assault and two counts of willful cruelty and not guilty of two counts of torture. Before sentencing, again arguing that he was not properly before the court for a criminal trial, he made another motion to dismiss. Again the prosecutor opposed, and the court denied, the motion. The court imposed a state prison sentence.

DISCUSSION

I. Constitutionality Of Proposition 21

Chacon argues that Proposition 21 violates the single-subject initiative rule (Cal. Const., art. II, § 8, subd. (d)) and that the discretionary direct file authority enacted into Welfare and Institutions Code section 707, subdivision (d)(1) violates state constitutional

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[1]The Gang Violence and Juvenile Crime Prevention Act of 1998. (Initiative Measure, Voter Information Guide, Primary Elec. (Mar. 7, 2000) Prop. 21 (hereafter Proposition 21).)

guarantees of separation of powers (Cal. Const., art. III, § 3),[2] equal protection of the laws (*id*., art. I, § 7, subd. (a)), uniform operation of laws (*id*., art. IV, § 16), and due process of law (*id*., art. I, §§ 7, subd. (a), 15).

After briefing was complete in the case at bar, the California Supreme Court adjudicated challenges like Chacon's. The court held that Proposition 21 does not violate the single-subject initiative rule (Cal. Const., art. II, § 8, subd. (d)), that the grant in Welfare and Institutions Code section 707, subdivision (d) (hereafter 707(d)) of prosecutorial discretion to file charges against certain minors directly in criminal court without juvenile court fitness hearings does not violate the separation of powers doctrine (Cal. Const., art. III, § 3), that section 707(d)'s elimination of a prior juvenile court fitness hearing does not violate due process of law (Cal. Const., art. I, §§ 7, subd. (a), 15), and that section 707(d)'s grant of prosecutorial discretion to file charges against some minors but not others does not violate equal protection of the laws (Cal. Const., art. I, § 7, subd. (a)) or the uniform operation of the laws doctrine (*id*., art. IV, § 16). (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 550-562.)

II. Posttrial Criminal Court Discretion to Order a Juvenile Disposition

Chacon argues that a criminal court has the discretion to order a juvenile disposition after a criminal trial on a discretionary direct file. The Attorney General argues the contrary.

The discretion at issue originates in a statute that requires a criminal court to secure a prosecutor's consent to order a juvenile disposition after a criminal trial on a discretionary direct file:

> "Notwithstanding any other provision of law, the following shall apply to a person sentenced pursuant to Section 1170.17. [¶] … [¶] (4) *Subject to the knowing and intelligent consent of both the prosecution and the person*

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[2]California Constitution, article III, section 3 (formerly Cal. Const., art. III, § 1) provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

> *being sentenced pursuant to this section*, the court may order a juvenile disposition under the juvenile court law, in lieu of a sentence under this code, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering a juvenile disposition, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the social study made by the probation officer has been read and considered by the court." (Pen. Code, § 1170.19, subd. (a)(4), italics added. Added by Stats. 1999, ch. 996, § 12.1.)

On the threshold question that arises—whether the requirement of a prosecutor's consent violates the state Constitution's separation of powers doctrine—we examine relevant case law. In the seminal case of *People v. Tenorio* (1970) 3 Cal.3d 89, 91-95, the California Supreme Court held that a statute requiring the court to secure a prosecutor's consent to dismiss an allegation of a prior violates the state Constitution's separation of powers doctrine by improperly invading the constitutional province of the judiciary:

> "When the decision to prosecute has been made, the process which leads to acquittal or to sentencing is fundamentally judicial in nature. Just as the fact of prosecutorial discretion prior to charging a criminal offense does not imply prosecutorial discretion to convict without a judicial determination of guilt, discretion to forego prosecution does not imply discretion to sentence without a judicial determination of those factors which the Legislature has never denied are within the judicial power to determine and which relate to punishment. The judicial power is compromised when a judge, who believes that a charge should be dismissed in the interests of justice, wishes to exercise the power to dismiss but finds that before he may do so he must bargain with the prosecutor. The judicial power must be independent, and a judge should never be required to pay for its exercise." (*Id*. at p. 94.)

In the years after *Tenorio*, the Supreme Court applied the rationale of that case to several analogous situations. In *Esteybar v. Municipal Court* (1971) 5 Cal.3d 119, 122, the court held that a statute requiring a magistrate to secure a prosecutor's consent to determine that a wobbler is a misdemeanor rather than a felony violates the separation of powers doctrine (see Pen. Code, § 17, subd. (b)):

> "Since the exercise of a judicial power may not be conditioned upon the approval of either the executive or legislative branches of government, requiring the district attorney's consent in determining the charge on which a defendant shall be held to answer violates the doctrine of separation of powers." (*Esteybar v. Municipal Court*, *supra*, 5 Cal.3d at p. 127.)

In *People v. Navarro* (1972) 7 Cal.3d 248, 258-260, the Supreme Court held that a statute requiring a trial court to secure a prosecutor's consent to order a posttrial commitment to a narcotic detention, treatment, and rehabilitation facility violates the separation of powers doctrine:

> "The imposition of sentence and the exercise of sentencing discretion are fundamentally and inherently judicial functions. [Citation.] … [¶] … 'It bears reiteration that the Legislature, of course, *by general laws* can control eligibility for probation, parole and the term of imprisonment, but it cannot abort the *judicial process* by subjecting a judge to the control of the district attorney.'" (*Id*. at pp. 258-259, fns. omitted.)

In *People v. Superior Court* (*On Tai Ho*) (1974) 11 Cal.3d 59, 61, the Supreme Court held that a statute requiring a trial court to secure a prosecutor's consent to order pretrial diversion to a narcotic treatment and rehabilitation program violates the separation of powers doctrine:

> "… [W]hen the jurisdiction of a court has been properly invoked by the filing of a criminal charge, the *disposition* of that charge becomes a judicial responsibility. … With the development of more sophisticated responses to the wide range of antisocial behavior traditionally subsumed under the heading of 'crime,' alternative means of disposition have been confided to the judiciary." (*Id*. at p. 66.)

In *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 69-72, the court held that a local rule on wobblers precluding diversion to those whom a prosecutor charges with felonies while permitting diversion to those whom a prosecutor charges with misdemeanors does not violate the separation of powers doctrine. The local rule grants discretion that a prosecutor exercises *before* the filing of a criminal charge, but the challenged statutes at issue in *Tenorio* and progeny "purported to give a prosecutor the right to veto a decision made by a court *after* criminal charges had already been filed. None of the cases suggests that the exercise of prosecutorial discretion *prior* to the filing of such charges

improperly subordinates the judicial branch to the executive in violation of the Constitution, even though the prosecutor's exercise of such charging discretion inevitably affects the sentencing or other dispositional options available to the court." (*Davis v. Municipal Court*, *supra*, at p. 82.) Like the challenged statutes at issue in *Tenorio* and progeny, Penal Code section 1170.19, subdivision (a)(4) (hereafter 1170.19(a)(4)) purports to give a prosecutor the right to veto a decision that a criminal court makes *after* the filing of a criminal charge.

Manduley stresses the critical distinction between prosecutorial discretion *before* and prosecutorial discretion *after* the filing of a criminal charge. *Tenorio* and progeny "establish that the separation of powers doctrine prohibits the legislative branch from granting prosecutors the authority, *after* charges have been filed, to control the legislatively specified sentencing choices available to a court. A statute conferring upon prosecutors the discretion to make certain decisions *before* the filing of charges, on the other hand, is not invalid simply because the prosecutor's exercise of such charging discretion necessarily affects the dispositional options available to the court." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 553.) "Because [Welfare and Institutions Code] section 707(d) does not confer upon the prosecutor any authority to interfere with the court's choice of legislatively specified sentencing alternatives after an action has been commenced pursuant to that statute, we conclude that section 707(d) does not violate the separation of powers doctrine." (*Ibid*.)

In *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*), the court approved the application of the rationale in *Tenorio* to analogous situations in later cases and stated the fundamental principle in that line of authority: "When the jurisdiction of a court has been properly invoked by the filing of a criminal charge, the disposition of that charge becomes a judicial responsibility." (*Romero*, *supra*, at p. 517.) Implementing that principle, *Romero* avoided finding a violation of the separation of powers doctrine by construing a provision of the three strikes law so as not to require a prosecutor's consent

to the exercise of the trial court's authority on its own motion to strike a strike prior at sentencing. (*Id*. at pp. 509-517; Pen. Code, §§ 667, subd. (f), 1385.)

The discretion that Penal Code section 1170.19(a)(4) grants to a criminal court to order a juvenile disposition after a discretionary direct file indisputably constitutes a judicial responsibility squarely within the scope of "[a]ll of the subsequent cases applying *Tenorio* to invalidate legislative provisions …." (See *Davis v. Municipal Court*, *supra*, 46 Cal.3d at p. 83.) Like the statutes in *Tenorio* and progeny, section 1170.19(a)(4) authorizes "the exercise of a prosecutorial veto *after* the filing of criminal charges, when the criminal proceeding has already come within the aegis of the judicial branch." (*Davis v. Municipal Court*, *supra*, at p. 83.) Accordingly, we hold that section 1170.19(a)(4)'s requirement that a criminal court secure a prosecutor's consent to order a juvenile disposition after a criminal trial on a discretionary direct file violates the state constitution's separation of powers doctrine. (Cal. Const., art. III, § 3.) Since the constitutionally infirm requirement of a prosecutor's consent is severable from the rest of section 1170.19(a)(4) (see *People v. Navarro*, *supra*, 7 Cal.3d at pp. 260-264), we turn to the issue of whether Chacon is entitled to relief from the denial of his request.[3]

III. The Request for Relief on the Record

Chacon argues that the court was not aware of its statutory discretion to order a juvenile disposition after a criminal trial on a discretionary direct file and that a remand is necessary to allow the exercise of that discretion. The Attorney General argues that the court had no discretion and that no remand is necessary.

Since the passage of Proposition 21, Welfare and Institutions Code section 602, subdivision (b) mandates criminal court jurisdiction (without a prior juvenile court fitness adjudication) of any minor 14 years of age or older facing any murder or serious sex offense charge on the list in that statute. (Amended by Stats. 1999, ch. 996, § 12.2;

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[3]In the absence of opposition by Chacon to a juvenile disposition, the issue of whether the statute's requirement of the accused's consent is severable from the invalid requirement of a prosecutor's consent is not before us. (Cf. *People v. Navarro*, *supra*, 7 Cal.3d at pp. 264-265.)

Proposition 21, § 18; Stats. 2001, ch. 854, § 72.) For any minor 16 years of age or older facing any charge not on that list but on the list in section 707, subdivision (b), post-Proposition 21 section 707, subdivision (d)(1) authorizes discretionary direct file criminal court jurisdiction (without a prior juvenile court fitness adjudication). (*Ibid*.; Stats. 1998, ch. 936, § 21.5; Proposition 21, § 26.) The accusatory pleading in the case at bar charged Chacon with assault by means of force likely to produce great bodily injury and with torture. (Pen. Code, §§ 206, 245, subd. (a)(1).) Each of those offenses on the list in section 707, subdivision (b) authorizes the discretionary direct file in the case at bar. (§ 707, subds. (b)(14), (b)(23), (d)(1).)

With reference to Welfare and Institutions Code section 707(d), the statute at issue in *Manduley*, the Supreme Court notes that "[t]he prosecutor's discretionary charging decision … is no different from the numerous prefiling decisions made by prosecutors … that limit the dispositions available to the court after charges have been filed. *Conferring such authority upon the prosecutor does not limit the judicial power*, *after charges have been filed*, *to choose among the dispositional alternatives specified by the legislative branch*." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 555, italics added.) One of those alternatives is the discretion that Penal Code section 1170.19(a)(4) grants to a criminal court to order a juvenile disposition after a criminal trial on a discretionary direct file. *Manduley* characterizes as only a *general* rule the statutory preclusion by section 707(d) of a juvenile disposition: "If the prosecutor initiates a proceeding in criminal court, and the circumstances specified in section 707(d) are found to be true, the court *generally* is precluded by statute from ordering a juvenile disposition. (Welf. & Inst. Code, § 1732.6, subd. (b)(2); see Pen. Code, §§ 1170.17, *1170.19*.)" (*Manduley* at p. 555, italics added.)

Manduley later states: "The voters, through the enactment of Proposition 21, have determined that the judiciary shall not make the determination regarding a minor's fitness for a juvenile disposition where the prosecutor initiates a criminal action pursuant to [Welfare and Institutions Code] section 707(d)." (*Manduley v. Superior Court*, *supra*, 27

Cal.4th at p. 555, fn. omitted.) We read that sentence as an articulation of section 707(d)'s mandate: "In any case in which the district attorney … has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to the provisions of this subdivision, the case shall then proceed according to the laws applicable to a criminal case." (§ 707, subd. (d)(4).)

For two reasons, we decline to make a broader inference from that sentence. First, not once did *Manduley* cite Penal Code section 1170.19(a)(4), the statute in which the Legislature expressly granted discretion to the criminal court to order a juvenile disposition after a criminal trial on a discretionary direct file. That statute was simply not at issue in that case. It is axiomatic that cases are not authority for propositions not considered. (*People v. Nguyen* (2000) 22 Cal.4th 872, 879; *People v. Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7.) Second, *Manduley* itself notes that "a prosecutor's decision to file charges against a minor in criminal court pursuant to [Welfare and Institutions Code] section 707(d) is not analogous to a prosecutor's veto of a court's legislatively authorized determination, after a judicial hearing, of a defendant's suitability for a particular disposition …." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 559.) On that rationale, as section 707(d) survives a separation of powers analysis, so section 1170.19(a)(4) does not.

After conviction on a discretionary direct file, Penal Code section 1170.17, subdivision (a)[4] authorizes the court to impose the same sentence for a minor as for an adult pursuant to the authority of section 1170.19, subdivision (a). "Notwithstanding any other provision of law," the latter statute not only sets out (in subparagraphs (1)-(3)) conditions for the imposition of an adult sentence but also articulates (in subparagraph (4)) an express legislative grant of discretion to the criminal court to order a juvenile

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[4]Penal Code section 1170.17, subdivision (a) provides in part: "When … the prosecution is lawfully initiated in a court of criminal jurisdiction …, the person shall be subject to the same sentence as an adult convicted of the identical offense, *in accordance with the provisions set forth in subdivision* (*a*) *of Section 1170.19* …." (Italics added; added by Stats. 1999, ch. 996, § 12; amended by Stats. 2000, ch. 287, § 15.)

disposition instead. (*Ibid*.) The criminal court's exercise of that discretion *after* the filing of a criminal charge is not at all inconsistent with a prosecutor's decision *before* the filing of a criminal charge to proceed with a discretionary direct file.

As *Manduley* notes, a prosecutor's "traditionally … broad power to charge crimes extends to selecting the forum …." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 552.) By selecting the forum, a prosecutor selects the procedure and protocol of that forum. Whether in juvenile court at a disposition hearing or in criminal court after trial, Welfare and Institutions Code section 706 adds to the record a base of "evidence on the question of the proper disposition to be made of the minor."[5] In only the latter forum, however, can the rigorous adversarial character of a criminal trial add another dimension of evidence, rulings, and findings to the record, both for the criminal court's posttrial exercise of Penal Code section 1170.19(a)(4) discretion and for the appellate court's review for possible abuse of discretion.

The "fundamental task of statutory construction is to 'ascertain the intent of the lawmakers so as to effectuate the purpose of the law.'" (*People v. Cruz* (1996) 13 Cal.4th 764, 774-775.) If the language is clear, the plain meaning of the words is determinative, and there is ordinarily no need to look beyond the statute itself. (*People v. Benson* (1998) 18 Cal.4th 24, 30.) If the language is ambiguous, the courts may "resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (*People v. Coronado* (1995) 12 Cal.4th 145, 151.)

Even though we do not find the language of the statute ambiguous, we nonetheless take note of the legislative history to quiet any doubt about the meaning of the words. A committee synopsis of Senate Bill No. 334, the bill that led to the enactment of Penal

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[5]Welfare and Institutions Code section 706, which Penal Code section 1170.19(a)(4) incorporates by reference, provides in part: "The court shall receive in evidence the social study of the minor made by the probation officer and any other relevant and material evidence that may be offered, including any written or oral statement offered by the victim, the parent or guardian of the victim if the victim is a minor, or if the victim has died or is incapacitated, the victim's next of kin …."

Code sections 1170.17, subdivision (a), and 1170.19(a)(4) alike, states: "This bill would enact reverse remand provisions applicable to minors against whom charges were filed directly in adult criminal court, as specified." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 334 (1999-2000 Reg. Sess.) as amended Sept. 9, 1999, p. 5.) The Senate Rules Committee analysis of that bill states: "Specifically, this bill: [¶] … [¶] Enacts a reverse remand provision authorizing the court to impose a juvenile disposition for a minor convicted after a direct file prosecution if the minor satisfies specified criteria." (Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 334 (1999-2000 Reg. Sess.) as amended Sept. 9, 1999, pp. 6-7.)

In the case at bar, the record shows no discussion by court or counsel of the discretion that Penal Code section 1170.19(a)(4) grants to order a juvenile disposition after a criminal trial on a discretionary direct file. On a silent record like that, a remand for resentencing is necessary.[6] "Defendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court." (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8, quoting *United States v. Tucker* (1972) 404 U.S. 443, 447; see *Townsend v. Burke* (1948) 334 U.S. 736, 741; *People v. Austin* (1981) 30 Cal.3d 155, 160-161.)

DISPOSITION

Chacon's state prison sentence is stricken from the judgment. The matter is remanded for a hearing at which the court shall exercise the discretion that Penal Code section 1170.19(a)(4) grants to a criminal court to order a juvenile disposition after a criminal trial on a discretionary direct file. After the exercise of that discretion, the court shall prepare an amended abstract of judgment. Otherwise, the judgment of conviction is affirmed.

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[6]If on remand the court were to order a juvenile disposition pursuant to Penal Code section 1170.19(a)(4), the issue of whether section 1385 might in some way give the court the authority to do so, as Chacon argues, would become moot. Accordingly, we need not address that issue.