

POINTS AND AUTHORITIES

The District Attorney of Alameda County Presents a Weekly Video Survey of
Criminal Law Approved for Credit Toward California Criminal Law Specialization: #172--
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Week Of	Topic	Guest	30 min
Feb. 13 2018	Prop 57 Retroactivity of Juvenile Law Provisions (<i>Peo. v. Lara</i>) Victims' Rights to Be Heard at Sentencing	Ken Ryken	General

***People v. Lara* (2018) 4 Cal.5th 299– California Supreme Court**

I. Holding:

Proposition 57 prohibits prosecutors from charging juveniles directly in adult court. Instead the action must commence in juvenile court, and if the prosecution wishes to try the juvenile as an adult, the juvenile court must conduct a transfer hearing to determine if the matter should remain in juvenile court or be transferred to adult court. This part of Proposition 57 is retroactive, applying to all juveniles charged in adult court whose judgment was not final at the time Proposition 57 was enacted.

II. Factual and Procedural Background

1. In June 2016, the District Attorney's Office filed an information in adult court charging the defendant with various sex offenses committed in 2014 and 2015 when the defendant was 14 and 15 years old. At the time of the Supreme Court's opinion, the defendant had not yet been tried. (p.*1)

2. On November 8, 2016, the electorate passed Proposition 57, and it took effect the next day. A week later, the defendant requested his matter be transferred to juvenile court for a "fitness hearing" pursuant to Proposition 57. After a hearing, on November 29, 2016, the trial court granted the motion, holding that Proposition 57 applies retroactively to this case. It issued a short stay to permit the People to seek writ review in the Court of Appeal. (*Id.*)

3. Three days later, the People filed a writ petition in the Court of Appeal challenging the trial court's order and seeking an additional stay. On March 13, 2017, the Court of Appeal issued an opinion denying the petition, concluding that Proposition 57 does not apply retroactively. But it also concluded that, applied prospectively, Proposition 57 entitled the defendant to a fitness hearing. (*Id.*)

4. Because the trial court stay of proceedings had expired, and the Court of Appeal did not issue its

own stay, matters continued at the trial court level. The trial court suspended proceedings in the adult court and ordered the defendant released from custody unless the People commenced a proceeding in the juvenile court. A contested hearing was scheduled in juvenile court. (*Id.*)

5. The People filed a petition for review and requested a stay. The Supreme Court stayed all further proceedings in juvenile and adult court pending further orders. The Supreme Court then granted review on the question of whether Proposition 57's juvenile law provisions apply retroactively to cases filed in adult court before Proposition 57 took effect. (*Id.*)

III. Analysis

A. Background

1. As the Supreme Court explains the general rule used to be that any individual less than 18 years old who violates the criminal law comes within the jurisdiction of the juvenile court, which may adjudge such an individual a ward of the court. (*Id.*)

2. However, in 1999 and 2000, amendments to former Welfare and Institutions Code sections 602 and 707 changed this historical rule. Under the changes, in specified circumstances, prosecutors were permitted, and sometimes required, to file charges against a juvenile directly in criminal court, where the juvenile would be treated as an adult. These provisions were in effect when the prosecution filed the charges against defendant directly in criminal court. (*Id.*)

3. "Proposition 57 changed the procedure again, and largely returned California to the historical rule." Proposition 57 amended the Welfare and Institutions Code so as to eliminate direct filing by prosecutors. Certain categories of minors can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated. (Welf. & Inst. Code, § 707, subd. (a)(1).) (p.*3.)

4. The question before the Supreme Court was whether this requirement of a transfer hearing before a juvenile can be tried as an adult applied to the defendant, even though he had already been charged in adult court before Proposition 57 took effect. (*Id.*)

B. Application to the Defendant

1. " 'The Legislature ordinarily makes laws that will apply to events that will occur in the future. Accordingly, there is a presumption that laws apply prospectively rather than retroactively. But this presumption against retroactivity is a canon of statutory interpretation rather than a constitutional mandate.' " As a result, the Legislature can enact laws that apply retroactively, either explicitly or implicitly. (p.*4.)

2. To determine if a law is meant to apply retroactively, the court must determine the intent of the Legislature, or in the case of a ballot measure, the intent of the electorate. (*Id.*)

3. In *In re Estrada* (1965) 63 Cal.2d 740, the Supreme Court held that a statute that reduced the punishment for a crime applied retroactively to any case in which the judgment was not final before the statute took effect. The Supreme Court here in *Lara* acknowledges that *Estrada* is not directly on point. Proposition 57 does not reduce the punishment for a crime. But the Supreme Court said the *Estrada* rationale does apply. (*Id.*)

4 The Supreme Court looked at the “ameliorating benefit” that Proposition 57 provides. The Supreme Court stated that for those minors who remain in the juvenile court, with its primary emphasis on rehabilitation rather than punishment, the potential effect of the “ameliorating benefit” is analogous to the potential reduction in a defendant’s sentence. “The 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.” Applying the reasoning of *Estrada*, the Supreme Court in *Lara* found that the electorate, by approving Proposition 57, determined that the former system of direct filing was too severe, citing *People v. Vela* (2017) 11 Cal.App.5th 68, 72, review granted. Therefore, “the same inference of retroactivity [as in *Estrada*] should apply.” (p.*5.) (*Id.*)

5. The Supreme Court in *Lara* stated further that as an “ ‘ameliorative change to the criminal law,’ ” the court must infer that the Legislature intended Proposition 57 to extend as broadly as possible. (*Id.*) The Supreme Court noted that nothing in Proposition 57 or the ballot materials rebuts this inference, and that Proposition 57 provides that the “act shall be liberally construed to effectuate its purposes.” (*Id.*)

C. The Remedy

1. In this case, at the time the Supreme Court granted review and issued its stay, the juvenile court had denied the People’s request to transfer the matter back to adult court. A contested jurisdictional hearing was scheduled when the stay of proceedings was imposed. The Supreme Court here in *Lara* concluded the defendant properly received the benefit of Proposition 57 and lifted the stay. (p.*2.)

2. The Supreme Court also discussed the remedy in those circumstances in which the defendant was tried and convicted in adult court, but whose judgment was not yet final at the time Proposition 57 was enacted. The Supreme Court did not set forth specific procedures, but discussed with approval the remedy afforded in *People v. Vela*, *supra*, 11 Cal.App.5th at p. 72, framed by the Court of Appeal in light of the particular circumstances in *Vela*. The *Vela* court initially observed that “the jury’s convictions, as well as its true findings as to the enhancements, will remain in place. Nothing is to be gained by having a ‘jurisdictional hearing,’ or effectively a second trial in the juvenile court.” (*Vela*, at p. 81.) (p.*6.)

3. The *Vela* court then continued: “Here, under these circumstances, Vela's conviction and sentence are conditionally reversed and we order the juvenile court to conduct a juvenile transfer hearing. (§ 707.) When conducting the transfer hearing, the juvenile court shall, to the extent possible, treat the matter as though the prosecutor had originally filed a juvenile petition in juvenile court and had then moved to transfer Vela's cause to a court of criminal jurisdiction. (§ 707, subd. (a)(1).) If, after conducting the juvenile transfer hearing, the court determines that it would have transferred Vela to a court of criminal jurisdiction because he is ‘not a fit and proper subject to be dealt with under the juvenile court law,’ then Vela’s convictions and sentence are to be reinstated. (§ 707.1, subd. (a).) On the other hand, if the juvenile court finds that it would not have transferred Vela to a court of criminal jurisdiction, then it shall treat Vela’s convictions as juvenile adjudications and impose an appropriate ‘disposition’ within its discretion.” (*Vela*, at p. 82.) (p.*6.)

4. The Supreme Court in *Lara* acknowledged the complexity of such a procedure, but stated, “The potential complexity in providing juveniles charged directly in adult court with a transfer hearing is not reason to deny the hearing.” (p.*8.)

Perez v. Superior Court 2018 WL 495157

Although this case is unpublished, it is included in this week’s P&A as a reminder of the prosecutors’ obligations under Marsy’s law to ensure that the victim has the opportunity to be heard at the plea and sentencing of the case in which he or she is the victim. The trial court here sentenced the defendant forthwith, without ordering a probation and sentence report. The trial court neither requested nor inquired about the presence of the victim at the plea. The prosecutor did not provide notice to the victim. As the Court of Appeal concludes, despite the failure to comply with the victim’s constitutional and statutory rights, the trial court was without a remedy for its error.

I. Factual and Procedural Background

A. The Events in the Trial Court

1. On January 31, 2017, the petitioner was charged in a felony complaint with two counts of driving under the influence of alcohol causing bodily injury, hit and run with injury, and driving on a suspended or revoked license.

2. The opinion states that a week later, on February 8, 2017, the court noted its receipt of a written Victim Impact Statement in the matter and said, “And I will also note for the record that submitted to the court was a victim impact statement on this case. It was approximately two pages. It appears to have been from the victim’s mother. The court did review that and did share it with both [counsel]. [It] will be filed under seal, since it does reflect the victim’s medical condition.”

3. On September 14, 2017, seven months later, the matter was before the trial court for preliminary hearing. The People advised the court that their offer in the case was four years, four months in state prison. The defendant rejected that offer and asked for probation. The trial court denied defendant's request, but indicated that, if the defendant admitted all counts and enhancements – essentially pleading to the sheet -- the court would strike the GBI for purposes of sentencing and impose an indicated sentence of two years. At this hearing, the prosecutor provided the court with the victim's actual medical records and a copy of the victim impact statement. The victim's impact statement included this remark by its author, "As this is being written quickly, I know there are other issues that I may wish to add later."

4. One month later, on October 17, 2017, the matter was back on calendar. On that date, the defendant pled guilty to the sheet per the court's indicated sentence. The court accepted the defendant's change of plea and sentenced him forthwith to the low term of two years in state prison. The trial court did not ask nor inquire about the presence of the victim or her mother at that time. Nor did the trial court order a probation and sentencing report. The court then ordered that the defendant be delivered forthwith to the custody of the Department of Corrections.

5. A week after the defendant was sentenced, the District Attorney's Office filed in the trial court a "Request on Behalf of Victim to Make In Court Marsy's Law Statement and Restitution Order for an Amount Due." The following week the District Attorney's Office filed a motion for reconsideration of the defendant's sentence on the basis that neither the victim nor her relatives had the opportunity to address the court before the defendant was sentenced. The defendant filed a response.

6. A week later, on December 1, 2017, the trial court conducted a hearing at which it heard an oral statement from the victim's mother that she did not have the opportunity to address the court at the sentencing hearing as required under Marsy's Law. At the conclusion of the hearing, the court granted the District Attorney's motion and vacated the defendant's plea and sentence that had been entered on October 17, reinstated criminal proceedings, and set the matter for a preliminary hearing.

B. The Events in the Court of Appeal

1. The defendant filed a petition for writ of mandate/prohibition in the Court of Appeal, challenging the trial courts' order vacating his plea and sentence. The Court of Appeal stayed all proceedings and ordered the District Attorney to file an opposition to the petition. In its opposition, the District Attorney argued that the trial court correctly recalled the defendant's sentence in order to provide the victim with an opportunity to be heard, but conceded that any resentencing was limited to no more than two years, the amount of the original sentence. The District Attorney also conceded that the trial court was without authority to vacate the defendant's guilty plea.

2. The Court of Appeal then received an application from the victim and her mother and from the National Crime Victim Law Institute to appear as amici curiae in support of the trial court. The amici argued that the rights of the crime victims in this case were violated because they were denied their constitutional and statutory right to be present and heard at the plea and sentencing. The amici also

contended that the trial court properly exercised its right to vacate the defendant's plea and sentence based on its inherent authority to withdraw its acceptance of the plea agreement, and the trial court had the authority to recall the sentence and vacate the plea in this case because the plea was "invalid and unlawful."

II. The Court of Appeal's Analysis

1. The Court of Appeal began its analysis by noting that all parties in the case agreed the victims had a constitutional and statutory right to notice and to be heard at the proceedings conducted on October 17, 2017. (Cal. Const., art. I, § 28; Pen. Code, §§ 679.02, 1191.1.)

2. To the extent the victims were entitled to notice, the California Constitution, article I, section 28, subdivision (b)(6), states the prosecuting agency is to provide notice and inform the victim before any pretrial disposition of the case. Additionally, Penal Code section 1191.1, charges the probation department with providing the victim with adequate notice of sentencing proceedings. The Court of Appeal stated that, based on the transcript of the hearing on the District Attorney's motion for reconsideration in the trial court, neither the People nor the probation department provided the victim with notice before the disposition or the sentencing hearing in this case.

3. The District Attorney conceded the merits of the defendant's petition for writ of mandate/prohibition. In a criminal case, judgment is rendered when the trial court orally pronounces sentence. Once the court has rendered judgment and execution of the judgment has commenced, the trial court lacks jurisdiction to vacate or in any manner modify the judgment so as to increase the penalty already imposed. Here, at the time the court vacated the defendant's sentence and plea, the defendant had already been sentenced and delivered to the custody of the Department of Corrections.

4. Although the judgment cannot be vacated or modified, Penal Code section 1170 subdivision (d)(1) allows the trial court to recall the defendant's sentence within the 120 days of the date of the commitment "and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence." Recall of a sentence pursuant to section 1170(d)(1) is " 'limited to resentencing and [does] not give the court authority to modify the judgment of conviction.' "

5. Nevertheless the amici contended that the court properly exercised its inherent authority to withdraw its acceptance of the plea and vacate the defendant's plea and sentence even after the defendant began his term of imprisonment. The Court of Appeal, however, rejected all the particular grounds for this argument, distinguishing the case authority relied on by amici.

6. Additionally the amici argued that the court had the inherent authority to vacate the plea because "the plea was invalid and unlawful" as a result of the court's failure to comply with Marsy's law. But the Court of Appeal stated that the court's failure to comply with the victim's constitutional and statutory rights "does not deprive the trial court of its jurisdiction to proceed," citing *People v.*

Superior Court (Thompson) (1984) 154 Cal.App.3d 319, 322.) Although the *Thompson* case preceded the enactment of Marsy's Law, the Court of Appeal pointed out that the amendment to Article 1 of the California Constitution, §28, still does not provide for procedures to enforce the duties of notification to victims and remedies for noncompliance.

7. Amici also argued that it was error for court to impose sentence without considering the statements of the victims because Penal Code section 1191.1 states, "The court in imposing sentence shall consider the statements of victims" But the Court of Appeal said any error attributable to court for not considering the victim's statement is not synonymous with the trial court lacking fundamental jurisdiction to accept a defendant's plea and render judgment.

8. The Court of Appeal thus granted the defendant's writ of mandate and prohibition. The trial court was ordered to reinstate the defendant's guilty plea and proceed with a resentencing to a term not to exceed the one previously imposed.

III. Takeaways

Takeaways provided by Assistant District Attorney Ken Ryken who is in charge of the Alameda County District Attorney's Office Restitution Unit:

Since 1982, and the passage of the initial Victim's Bill of Rights, every California crime victim has constitutional and statutory rights to notice of the proceedings and the opportunity to be heard at the plea and sentencing of the case in which they are the victim. Marsy's Law, passed by the voters in 2008, expanded on these rights. Article I, section 28 of the California Constitution now mandates that the prosecuting agency shall provide notice to and inform the victim before any pretrial disposition of the case. Notice did not happen in this case.

There was apparently no indication in the record that the parties waived preparation of the probation report. Penal Code section 1191.1 states that the probation department shall provide adequate notice to the victims of sentencing proceedings, and this notice generally occurs in connection with the preparation of the presentence or probation report in the case. This is also the time when the Probation Department generally makes inquiries to the victim regarding any restitution to be claimed. Because the defendant was sentenced forthwith, that process did not occur.

It is critical to reflect on what happened in this case. The prosecutor went to court to conduct a preliminary hearing and, as stated in the Court of Appeal opinion, it appears it turned into bargaining session where the court made a "plea to the sheet" offer. Then the case went over one month, the defendant accepted the court's offer and was sentenced forthwith. There is no question that the prosecutor had a constitutional duty under Marsy's Law to contact the victim, advise the victim of the court's offer and the relevant court date. In hindsight, when presented with this situation at the October 17 hearing, the better course would have been for the prosecutor to have respectfully notified the court that the victim was not present at that time and remind the court that crime victims have a right under our Constitution to be present for such proceedings. The prosecutor could then have

requested that the matter be continued to a convenient date and time that would provide the prosecutor with an opportunity to meet with the victim in this regard.

It is very compelling that the Court of Appeal in *Perez* states that there is no remedy for a violation of the victim's rights in these regards. If the Court of Appeal is correct on this point, then it places an even greater burden on us, as prosecutors, to ensure that we do everything within our ability to ensure that the victims' rights are upheld and effectuated in each and every case we handle.

Victims have a very limited scope of constitutional rights and some of them include the right to be present at critical stages. This right is no less important than the defendant's right to counsel or any of the other rights of the defendant that we uphold every day. It is equally important for courts to take the time to ensure that the victim's rights are upheld just they take the time to ensure that the defendant's rights are upheld.

Suggestions for future shows, ideas on how to improve P&A, and other comments or criticisms should be directed to P&A author Mary Pat Dooley at (510) 272-6249, marypat.dooley@acgov.org. Technical questions should be addressed to Gilbert Leung at (510) 272-6327. Participatory students: MCLE Evaluation sheets are available on location and certificates of attendance are constructively maintained in your possession in the Ala. Co. Dist. Atty computer banks.

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