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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN PHILLIP COLLINS,

Defendant and Appellant.

H043887

(Monterey County

Super. Ct. No. SS112146A)

Defendant Stephen Phillip Collins appeals from an order denying his Penal Code section 17, subdivision (b)<sup>1</sup> motion to reduce his felony convictions to misdemeanors. As set forth below, we find no error in the denial of the section 17(b) motion, and we affirm.

**BACKGROUND**

An information, filed on November 28, 2012, charged defendant with two counts of conflict of interest (Gov. Code, § 1090; counts 1 and 2), thirty counts of grand theft by false pretenses (Pen. Code, § 487, subd. (a); counts 3-32), six counts of receiving a reward for doing an official act (Pen. Code, § 70, subd. (a); counts 33-38), one count of attempting to dissuade a witness (Pen. Code, § 136.1, subd. (a)(2); count 39), one count of dissuading a witness (Pen. Code, § 136.1, subd. (b)(2); count 40), and one count of attempted inducement of false testimony (Pen. Code, §§ 664/137, subd. (c); count 41).

On March 18, 2014, pursuant to a plea agreement, defendant pleaded no contest to one felony count of conflict of interest (Gov. Code, § 1090; count 2), one felony count of

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<sup>1</sup> Penal Code section 17, subdivision (b) will hereafter be referred to as “section 17(b).”

grand theft by false pretenses (Pen. Code, § 487, subd. (a); count 3), and one misdemeanor count of receiving a reward for doing an official act (Pen. Code, § 70, subd. (a); count 33). The conflict of interest charge was based on contracts defendant made in his official capacity as a director of the Monterey County Water Resources Agency. Pursuant to those contracts, defendant received \$130,000 in compensation. The grand theft charge was based on false representations defendant made on invoices he presented to Ocean Mist Farms, a company for which he provided consulting services. The final charge, receiving a reward for doing an official act, was based on defendant's receipt of money for attending a meeting of the Monterey County Water Resources Agency.

Defendant's plea agreement provided that defendant "would be able to petition for reduction to misdemeanor pursuant to PC 17(b) after successfully completing 18 months on probation." At the plea hearing on March 18, 2014, the prosecutor explained this portion of the plea agreement as follows: "[Defendant] may under this agreement petition this Court to have his felony convictions reduced to misdemeanors pursuant to Section 17(b) of the Penal Code. That, of course, is a motion that defendant really in any case can bring. [¶] It's also understood that the DA can, and most likely will, object in this case to the reduction to a misdemeanor." Defense counsel agreed with the prosecutor's characterization of the plea agreement, stating: "That is the agreement that was reached."

At the sentencing hearing on May 22, 2014, the trial court suspended imposition of sentence and placed defendant on formal probation for a term of three years. The trial court ordered defendant to pay victim restitution to Ocean Mist Farms in the amount of \$89,754.26. The parties agreed that defendant's probation term would be extended to five years if he did not fully pay restitution within three years. The trial court dismissed all remaining charges in the information.

On July 21, 2016, defendant filed a section 17(b) motion to reduce his two felony offenses to misdemeanors. In his written motion, defendant presented the following argument in favor of reduction: “Defendant Collins has dutifully complied with all formal probation requirements for the past 18 months, and has had no probation and/or new law violations during this time period. Consistent with his plea agreement entered into with this Court and the prosecution . . . , defendant Collins is entitled to and respectfully request[s] that this Court reduce his felony wobbler convictions to misdemeanors pursuant to Penal Code § 17 (b) in the above entitled case.”

The People opposed reduction to misdemeanors. In the written opposition, the People argued that defendant had “no entitlement” to a section 17(b) reduction and had “not made any showing of need, necessity or even provided a reason to reduce the felonies to misdemeanors.” The People also argued that, because defendant had paid only \$9,000 toward his \$89,754.26 restitution debt, granting the section 17(b) motion “would reduce [defendant’s] incentive to continue [to] pay his obligation in full and leave the victim without the Court ordered restitution.”

The trial court held a hearing on the section 17(b) motion on August 17, 2016. At the hearing, defense counsel conceded that “a 17(b) motion being granted” was “not a condition” of the plea agreement. Defense counsel noted, however, that there was no condition in the plea agreement that required full payment of restitution before the trial court could grant a section 17(b) motion. Defense counsel thus argued, “I don’t think restitution and paying off restitution should be considered in the 17(b) motion at this time.” The prosecutor argued that “restitution is something the Court should consider,” noting that a denial of the section 17(b) motion would provide an incentive for payment of restitution. Defense counsel argued: “[H]aving a felony on [his] record has inhibited [defendant’s] ability to grow his business to allow him to pay off the large amount of restitution that exists. It has also inhibited his ability to gain financing to take notes out on his house or otherwise be able to pay off the large amount of restitution still

outstanding.” Defense counsel urged the court “to give [defendant] a misdemeanor” so that he would have “the opportunity he needs to pay off that large debt.”

At the conclusion of the hearing, the trial court denied the section 17(b) motion “without prejudice.” The trial court explained its ruling as follows: “The Court is going to deny the 17(b) motion. I don’t think that this is the appropriate time given the amount of restitution that he’s paid. . . . ¶¶ What I want is for [defendant] to pay off as much restitution as he can within his ability to pay. So that way we don’t find ourselves in a position where in another year and a half or whatever period of time we’re arguing this again and there is a possibility of probation being extended. ¶¶ Obviously the best thing would be for him to be able to move past this, but that does in this Court’s view begin with the payment of restitution.”

## **DISCUSSION**

Defendant contends that the trial court abused its discretion in denying his section 17(b) motion. Specifically, he argues: “The court’s reliance here on the fact that [he] still owed victim restitution was an irrational and arbitrary reason for denying the motion.” As explained below, defendant has failed to show an abuse of discretion.

### ***Legal Principles and the Standard of Review***

When a trial court grants felony probation on a “wobbler” offense, section 17(b) authorizes the trial court to later declare the offense to be a misdemeanor. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974 (*Alvarez*)). The trial court possesses “broad discretion” when determining whether “to reduce a felony wobbler offense to a misdemeanor.” (*People v. Clancey* (2013) 56 Cal.4th 562, 579.) In exercising this discretion, “those factors that direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ ” (*Alvarez, supra*, at p. 978.) The trial court may also consider the general objectives of sentencing, including securing restitution for the victims of crime. (*Id.* at

p. 978, fn. 5; see also Cal. Rules of Court, rule 4.410(a)(6) [“Securing restitution for the victims of crime” is one of the general objectives of sentencing].)

“A convicted defendant is not entitled to the benefits of section 17(b) as a matter of right.” (*People v. Tran* (2015) 242 Cal.App.4th 877, 892 (*Tran*), italics omitted.) The trial court “is not required to grant this relief.” (*Ibid.*) “Rather, a reduction under section 17(b) is an act of leniency by the trial court, one that ‘may be granted by the court to a seemingly deserving defendant, whereby he [or she] may escape the extreme rigors of the penalty imposed by law for the offense of which he [or she] stands convicted.’ ” (*Ibid.*)

We review a trial court’s ruling under section 17(b) for abuse of discretion. (*Alvarez, supra*, 14 Cal.4th at p. 977.) “We will not disturb the court’s decision on appeal unless the party attacking the decision clearly shows the decision was irrational or arbitrary.” (*Tran, supra*, 242 Cal.App.4th at p. 887.) Moreover, “ ‘[a] decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ ” (*Alvarez, supra*, at p. 978.)

### ***The Trial Court Did Not Abuse its Discretion***

Before we begin our analysis of defendant’s argument, we briefly address the Attorney General’s claim that defendant’s “appeal should be dismissed” because the denial of his section 17(b) motion “was not an appealable order.” The Attorney General’s contention is not persuasive. Our Supreme Court has concluded that a trial court’s exercise of discretion under section 17(b) may be reviewed by an appellate court. (*People v. Statum* (2002) 28 Cal.4th 682, 685; *Alvarez, supra*, 14 Cal.4th at p. 976; see also *Tran, supra*, 242 Cal.App.4th 877 [appellate court considered the merits of an appeal of the denial of a section 17(b) motion].) The Attorney General asserts that we should depart from this precedent because the motion here was denied without prejudice. The Attorney General, however, cites no authority demonstrating that a denial of a section 17(b) motion becomes unappealable simply because it is done without prejudice.

We deny the Attorney General's request to dismiss the appeal, and we now turn to the merits of defendant's argument.

Defendant has failed to show an abuse of discretion in the denial of his section 17(b) motion. "Securing restitution for the victims of crime" is a valid consideration when a trial court determines whether to grant or deny a section 17(b) motion. (Cal. Rules of Court, rule 4.410(a)(6); see also *Alvarez, supra*, 14 Cal.4th at p. 978, fn. 5.) The trial court's comments here show that it denied the section 17(b) motion in order to secure victim restitution. In denying the section 17(b) motion, the trial court explicitly stated that it wanted defendant "to pay off as much restitution as he can" so that he will "be able to move past this." Given that the trial court denied the section 17(b) motion "without prejudice," it was reasonable for the trial court to conclude that the current denial of defendant's section 17(b) motion would create an incentive for him to pay restitution. The trial court thus did not abuse its discretion in denying defendant's section 17(b) motion.

Defendant contends that the trial court's decision was "irrational and arbitrary" because a section 17(b) reduction "would actually increase [his] ability to pay the restitution." In support of this argument, defendant asserts that if his offenses were reduced from felonies to misdemeanors, he "would be able to take out a note on his house" and "would be able to gain additional [business] contracts, furthering his ability to pay the remaining restitution." Defendant's argument is unavailing. It might have been reasonable for the trial court to conclude that granting the section 17(b) motion was a proper means of securing victim restitution. However, as we explained above, it was also reasonable for the trial court to conclude that denying the section 17(b) motion was an appropriate method for procuring defendant's payment of restitution. A ruling on a section 17(b) motion " 'will not be reversed merely because reasonable people might disagree.' " (*Alvarez, supra*, 14 Cal.4th at p. 978.) Because the trial court's rationale for denying the section 17(b) motion was reasonable, defendant's argument fails.

Defendant also contends that the trial court abused its discretion because the provision in the plea agreement that permitted his section 17(b) motion “did not condition this opportunity on [his] completion of restitution payments.” This argument is meritless. The plea agreement was silent on the issue of whether the trial court could consider restitution when deciding a section 17(b) motion. As we have explained, the trial court has authority to consider procurement of restitution when determining whether to grant or deny a section 17(b) motion. (*Alvarez, supra*, 14 Cal.4th at p. 978, fn. 5; Cal. Rules of Court, rule 4.410(a)(6).) Defendant’s argument would require us to add a term to the plea agreement that eliminated the trial court’s authority to consider restitution when ruling on a section 17(b) motion. “We will not add a term to the plea that was not expressly agreed to. Nor will we imply a term purporting to restrict the discretionary authority of the trial court.” (*Tran, supra*, 242 Cal.App.4th at p. 891.) Defendant’s argument therefore fails.

In sum, defendant has not met the burden of showing the trial court’s ruling on the section 17(b) motion “was irrational or arbitrary.” (*Tran, supra*, 242 Cal.App.4th at p. 887.) We find no abuse of discretion in the denial of the section 17(b) motion, and we must affirm.

#### **DISPOSITION**

The order is affirmed.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.