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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TYESHA MOORE,

Defendant and Appellant.

B271685

(Los Angeles County
Super. Ct. No. MA065051)

APPEAL from an order of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Tyesha Moore is currently serving a sentence of 21 years in state prison following her conviction in May 2015 of two counts of assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b)),¹ one count each of possession of a firearm by a felon (§ 29800, subd. (a)(1)) and possession of ammunition (§ 30305, subd. (a)(1)), and her admission of two prior prison terms (§ 667.5, subd. (b)). One of the prior prison terms was for a felony burglary conviction (§ 459) in April 2011.

Defendant was sentenced in June 2015. In August 2015, she filed a petition under section Proposition 47 to reduce the prior burglary conviction to a misdemeanor. Although the record is not entirely clear on the point, it appears that the conviction arose from a charge that defendant possessed a forged access card with intent to defraud.

On November 13, 2015, the sentencing court in the burglary case heard the petition. At the hearing, the prosecutor conceded that defendant's burglary conviction was eligible for reduction to a misdemeanor because the value of the property taken or intended to be taken was less than \$950.² However, the prosecutor contended that defendant was not suitable for reduction under section 1170.18, subdivision (b), which provides in relevant part that the court shall

¹ All unspecified statutory references are to the Penal Code.

² Section 459.5, subdivision (a), provides: "Notwithstanding Section 459, shoplifting [which is punishable as a misdemeanor] is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950)." (§ 459.5, subd. (a).)

recall the sentence, “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following: [¶] (1) The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes. [¶] (2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.” Section 1170.18, subdivision (c) provides: “As used throughout this Code, ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.”³

³ Section 667, subdivision (e)(2)(C)(iv) provides a list of felony offenses commonly known as “super strikes.” (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) These offenses include “(I) A ‘sexually violent offense’ as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code. [¶] (II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289. [¶] (III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288. [¶] (IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive. [¶] (V) Solicitation to commit murder as defined in Section 653f. [¶] (VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245. [¶] (VII) Possession of a

The trial court reviewed defendant's record and agreed that defendant was not suitable for reduction: "I'm going to ultimately deny the request to reduce it under Prop. 47. I think she is eligible. I don't think she is suitable. However, I want the record to be abundantly clear. I'm not looking at the current conviction to make that determination. I am, though, going to look at her criminal history prior to this offense and I note the following: That she was convicted in — not convicted. She had a sustained petition in '91 for a burglary. She had a 245(a)(1) in '05 as a misdemeanor. She had a series of 459's and 484's. Then in 2014 there was a conspiracy to commit a crime, as well as attempted murder. In 2014, ultimately she was convicted of possession of ammunition for a misdemeanor. This long pattern of criminality, including violent crimes and arrests for violent crimes, leads me to believe that she would pose a risk to public safety in the sense that she would be likely to commit violent crimes. So based on all that, while eligible, I do not find her suitable, so the Prop. 47 petition is denied."

Defendant appealed from the ruling, and her appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised of her right to file a supplemental brief, but has not done so.

We have independently reviewed the record. A trial court's determination that a defendant poses an unreasonable risk of danger is

weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418. [¶] (VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death." (§ 667, subd. (e)(2)(C)(iv).)

reviewed for abuse of discretion. (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1264.) The probation report prepared for the case for which defendant is currently serving her sentence supports the trial court's assessment of defendant, although the court was incorrect in certain particulars. The probation report reflects the following: a sustained juvenile petition in 1991 for possession of a weapon at a school (the trial court erroneously referred to this as a sustained petition for burglary), two adult misdemeanor convictions of petty theft in 1997 and 1998, respectively, a misdemeanor conviction of assault with a deadly weapon in 2005, and four convictions of burglary (one in 2006, two in 2008, and one in 2010 — the conviction sought to be reduced).

The trial court also referred to conspiracy, attempted murder, and possession of ammunition as a misdemeanor in 2014. However, this entry refers to the original charges in the case for which defendant is currently serving her sentence. She was ultimately convicted of two counts of assault with a semiautomatic firearm, as well as one count each of possession of ammunition as a felony and felon in possession of a firearm. Although the court stated that it would not consider the “current conviction,” apparently referring to the case for which defendant is currently serving her sentence, the court unnecessarily circumscribed its review. The time for determining defendant's dangerousness is at the time the petition under section 1170.18 is ruled upon. Here, defendant had already been convicted and sentenced on that case. Thus, the court could properly consider the current convictions, and to the extent the entry the court referred to was

inaccurate, that inaccuracy could not have worked to defendant's benefit in determining the level of risk she poses to public safety.

Having independently reviewed the record, we conclude that based on defendant's past record, the trial court did not abuse its discretion in determining that defendant poses an unreasonable risk of committing a new violent felony within the meaning of section 667, subdivision (e)(2)(C)(iv).

DISPOSITION

The order is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.