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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE DYSON,

Defendant and Appellant.

B261823

(Los Angeles County
Super. Ct. No. YA089949)

APPEAL from an order of the Superior Court of Los Angeles County,

Paul T. Suzuki, Judge. Affirmed.

Melissa L. Camacho-Cheung, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Respondent.

Defendant George Dyson appeals from a post-judgment order denying his petition for recall of sentence and request for resentencing under Penal Code section 1170.18 (Proposition 47). We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On April 3, 2014, defendant was detained for drinking alcohol in public. After Los Angeles County sheriffs recovered multiple off-white substances resembling rock cocaine from him, defendant stated that he intended to cut up the cocaine and resell it. Thereafter, defendant was arrested.

In a felony complaint filed on April 7, 2014, defendant was charged with one count of violating Health and Safety Code section 11351.5, possession for sale of cocaine base. The complaint also alleged that defendant had sustained prior felony strike convictions for shooting at an inhabited dwelling and robbery.

On June 4, 2014, defendant pled guilty to one count of violating Health and Safety Code section 11351.5. He also admitted that he suffered prior strike convictions for violating Penal Code sections 246 (shooting at an inhabited dwelling) and 211 (robbery). After finding that the plea and admissions were knowingly, understandingly, intelligently, and voluntarily given, the trial court sentenced defendant to the middle term of four years in state prison and dismissed the prior convictions. The court also awarded defendant 132 days credit.

Subsequently, defendant filed a petition to recall his sentence under Proposition 47. On January 23, 2015, the court heard and denied defendant's petition because his felony conviction for possession for sale of cocaine base was ineligible for relief under Proposition 47. Defendant filed a timely appeal from that order on January 29, 2015.

DISCUSSION

On June 16, 2015, defendant's appointed counsel filed a brief in which no issues were raised. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was also notified on June 16, 2015 of his right to file a supplemental brief or seek to relieve counsel but has not done so.

Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by ineligible defendants. (Penal Code section 1170.18, subd. (a).) These offenses were previously designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). “Proposition 47[:] (1) added chapter 33 to the Government Code (§ 7599 et seq.), (2) added sections 459.5, 490.2, and 1170.18 to the Penal Code, and (3) amended Penal Code sections 473, 476a, 496, and 666 and Health and Safety Code sections 11350, 11357, and 11377.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.)

Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person “currently serving” a felony sentence for an offense that is now a misdemeanor under Proposition 47 may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (Penal Code, § 1170.18, subd. (a).) A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be “resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (Penal Code, § 1170.18, subd. (b).)

Here, defendant was convicted of possession for sale of cocaine base under Health and Safety Code section 11351.5, a felony. Section 11351.5 was not amended by Proposition 47. Accordingly, the trial court correctly found that defendant’s conviction under section 11351.5 is not a qualifying offense and he is ineligible for resentencing under Proposition 47. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The order is affirmed.

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LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

JONES, J.^{*}

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.