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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GINO BRUNETTI,

Defendant and Appellant.

B280025

(Los Angeles County  
Super. Ct. No. A782760)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

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The trial court denied defendant and appellant Gino Brunetti's application to designate his prior felony conviction as a misdemeanor pursuant to the Safe Neighborhoods and Schools Act, commonly known as Proposition 47.<sup>1</sup> Brunetti's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues on appeal and requesting that we independently review the record. We affirm.

In 1986, Brunetti pled guilty to one count of possession of cocaine for sale in violation of Health and Safety Code section 11351. Brunetti also admitted, pursuant to Penal Code section 1203.073, subdivision (b)(1), that he possessed a substance containing 28.5 grams or more of cocaine or cocaine base, or 57 grams or more of a substance containing at least five grams of cocaine or cocaine base. The trial court sentenced him to two years in prison. In 2016, Brunetti filed an application to designate his conviction as a misdemeanor pursuant to Penal Code section 1170.18, subdivision (f). The trial court denied the application on the ground that Brunetti was not eligible for relief because the offense of which he was convicted remains a felony.

We appointed counsel to represent Brunetti in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. On April 19, 2017, we sent a letter to Brunetti and to counsel. In the letter, we directed counsel to immediately send the record on this appeal and a copy of the *Wende* brief to Brunetti and informed Brunetti that he had 30 days to submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We did not receive a response from him.

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<sup>1</sup> Proposition 47 is codified in relevant part at Penal Code section 1170.18.

We have reviewed the entire record on appeal and find no error in the trial court's conclusion that Brunetti does not meet the statutory criteria for relief. Proposition 47 classifies as misdemeanors certain drug- and theft-related offenses that had previously been felonies or wobblers. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Defendants who were previously convicted of these offenses as felonies and who have completed their sentences may file an application with the trial court to have their convictions designated as misdemeanors. (Pen. Code, § 1170.18, subd. (f).) Among the offenses reclassified under Proposition 47 is possession of a controlled substance, as defined in section 11350 of the Health and Safety Code. (See Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, the Safe Neighborhoods and Schools Act, § 11, pp. 72-73.) The offense to which Brunetti pled guilty, however, was possession of a controlled substance *for sale*, in violation of Health and Safety Code section 11351. This offense is not among those affected by Proposition 47, and remains a felony. Consequently, Brunetti is ineligible for relief.

We are satisfied that Brunetti's counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

**DISPOSITION**

The trial court's order is affirmed.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.