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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.

ANDRE FITZGERALD LESLEY,

Defendant and Appellant.

B288680

(Los Angeles County  
Super. Ct. No. BA176320)

APPEAL from an order of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Affirmed.

Andre Fitzgerald Lesley, in pro. per.; and James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## **BACKGROUND<sup>1</sup>**

On the evening of October 22, 1998, Hyun Mo Yang (Yang) was working at the Prima Vera Market, which he owned, at 5766 Venice Boulevard in the City of Los Angeles. A man wearing a Nike jacket, later identified as Lance Jeffrey (Jeffrey), walked into the market, pointed a gun at Yang, and demanded money. Jeffrey had Yang open the cash register, then lie down on the floor. After Jeffrey took the money from the cash register, he demanded more money. Yang pointed to some cigar boxes containing coins. Jeffrey put one of the cigar boxes into a plastic bag and poured coins from the other boxes into the bag. As Jeffrey then left the store, three customers were walking in. Jeffrey pointed his gun at them and ordered them out.

At the same time, Aaron McGhee (McGhee) and Adone Alexander (Alexander) were crossing Venice Boulevard, headed for the market. A green Buick Regal with “IROC” rims stopped in the middle of the street. Andre Lesley (Lesley), the only occupant of the car, got out, leaving the engine running, and approached McGhee and Alexander. He asked them if they wanted to buy some “weed.” McGhee replied that they did not smoke. During this conversation, Lesley’s attention was focused on the Prima Vera Market, behind McGhee and Alexander. McGhee turned around. He saw a man wearing a black Nike jacket and holding a brown paper bag under his arm come out of the market. The man nodded at Lesley, who nodded back. The man then walked down the alley behind the market. Lesley ran back to the Regal, then drove into the alley. McGhee went into

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<sup>1</sup> The following facts are from our unpublished opinion in *People v. Andre Fitzgerald Lesley* (Feb. 29, 2000, B131410).

the market, where Yang said he had been robbed and described the robber. Yang's description matched that of the man McGhee had seen leave the market and walk down the alley. As Yang telephoned 911, McGhee walked out of the market. He saw the green Regal, now containing two people, driving away on Venice Boulevard.

Officer Daryl Edwards and his partner, Officer Thomas Jackson, of the Los Angeles Police Department received a radio broadcast regarding a robbery and describing the green Regal. About an hour later, they saw a car matching the description. After it pulled into a gas station, Lesley got out and began walking toward the cashier. Officer Edwards detained him. Officer Jackson attempted to detain Jeffrey in the Regal, but Jeffrey got out and managed to escape. Officer Edwards searched the Regal. He found a black Nike jacket under the seat. Under the jacket was Yang's cigar box, filled with coins.

A jury found Lesley guilty of a second degree robbery (Pen. Code, § 211)<sup>2</sup> in which a principal was armed with a firearm (§ 12022, subd. (a)(1)). Following his conviction, the trial court found true the allegations that Lesley had four prior serious felony convictions (§ 667, subds. (a)(1), (b)-(i)) and one prior conviction for which he served a prison term within the meaning of section 667.5, subdivision (b). Lesley was sentenced to state prison. We affirmed Lesley's conviction on February 29, 2000.

### **CURRENT APPEAL**

On February 2, 2018, Lesley filed a petition in Los Angeles County Superior Court to reduce his prior robbery conviction

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

from a felony to a misdemeanor under section 1170.18. The petition was denied on February 2, 2018. Lesley filed a timely notice of appeal on February 26, 2018. Appointed counsel filed an opening brief on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. Counsel advised Lesley of his right to file a supplemental brief in this court within 30 days of the date the opening brief was filed. Counsel also advised Lesley that in the supplemental brief he may bring to the court's attention any issues he believed deserved review.<sup>3</sup> Counsel further advised Lesley that he could ask the court to relieve present counsel, and that a copy of his transcripts would be forwarded to him along with the opening brief.

We have independently reviewed the record on appeal and are satisfied that counsel fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441–442; *People v. Kelly* (2006) 40 Cal.4th 106, 109–110.) Section 1170.18, subdivision (a), lists the specific drug and theft offenses Proposition 47 subjected to potential reduction from felonies to misdemeanors, namely: “Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5 [shoplifting], 473 [forgery], 476a [insufficient funds check, draft, or order], 490.2 [petty theft], 496 [receiving stolen property], or

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<sup>3</sup> Lesley filed a supplemental brief, arguing that although a petitioner is ineligible for resentencing if “[d]uring the commission of the current offense, the defendant used a firearm, [or] was armed with a firearm” (§§ 667, subd. (e)(2)(C)(iii); 1170.12, subd. (c)(2)(C)(iii); see § 1170.126, subd. (e)), he was not charged with using a firearm. As noted above, the jury found that a principal was armed with a firearm during the offense.

666 [petty theft with a prior theft-related conviction] of the Penal Code.” Section 1170.18, subdivision (f) provides that “[a] person who has completed his or her sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application . . . to have the felony conviction or convictions designated as misdemeanors.” However, section 1170.18 does not include robbery (§ 211) as one of the offenses subject to Proposition 47. Thus, Proposition 47 left the offense of robbery a felony not subject to reduction, and Lesley is not eligible for relief under section 1170.18. The statutory language of section 1170.18 is clear and unambiguous that its relief applies only to the specifically enumerated offenses. Nothing in the language of section 1170.18 suggests that it should be extended further, and this court will not inquire into the purpose of Proposition 47 to extend section 1170.18 relief beyond its plain meaning. (*Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 620–622.)

#### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.