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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.

JACK JACKSON,

Defendant and Appellant.

B287963

(Los Angeles County
Super. Ct. No. A568464)

APPEAL from an order of the Superior Court of Los Angeles County, Stan Blumenfeld, Judge. Affirmed.

Cynthia Grimm, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Jack Jackson appeals from an order denying his petition for reclassification pursuant to Proposition 47. The trial court denied the petition, concluding that Proposition 47 did not apply to appellant's conviction. Appellant contends the trial court's interpretation of Proposition 47 was erroneous.

Appellant's appointed counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, requesting that this court conduct an independent review of the record. Having done so, we affirm the trial court's order denying appellant's petition.

PROCEDURAL HISTORY

On October 11, 1985, appellant was charged with one count of robbery in violation of Penal Code section 211.¹ It was further alleged that appellant had previously been convicted of burglary on March 18, 1983 in violation of section 459, and had served a prior prison term.

On February 5, 1986, appellant pleaded guilty to the robbery charge and admitted he had served a prior prison term, for purposes of the "Three Strikes" law. (§ 667.5, subd. (b).) Appellant was sentenced to the low term of two years in state prison; the sentence for the prior burglary charge was stayed.

On November 21, 2017, appellant filed a petition to reclassify the robbery conviction to a misdemeanor pursuant to Proposition 47. The petition alleges that appellant was eligible for reclassification based on section 490.2, which defines the crime of petty theft as the obtaining of property by theft where the value of the property does not exceed \$950, and makes such

¹ All further statutory citations are to the Penal Code, unless otherwise stated.

an offense punishable as a misdemeanor. The petition further alleges that the value of the property taken in the robbery was \$180.00. Appellant requested that his robbery conviction, a felony, be reclassified as petty theft, a misdemeanor.

On December 29, 2017, the trial court denied the petition. It determined that “[the robbery conviction] is ineligible for reduction under Proposition 47.”

Appellant filed a timely appeal challenging the denial of his petition for reclassification. After reviewing the record, appellant’s court-appointed counsel filed an opening brief requesting this court independently review the record pursuant to the holding of *People v. Wende, supra*, 25 Cal.3d 436. On April 25, 2018, we sent a letter to appellant’s last known address, advising him that he had 30 days within which to submit by brief or letter any contentions or argument he wished this court to consider. Appellant did not submit any brief or letter.

DISCUSSION

Proposition 47 “makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Proposition 47 allows a defendant who is currently serving a sentence for a felony that would have been a misdemeanor had Proposition 47 been in effect at the time of the offense to file a petition for recall of sentence and resentencing before the trial court that entered the judgment. (§ 1170.18, subds. (a)-(b).) It also authorizes a defendant who has completed a sentence for a felony conviction that would have qualified as a misdemeanor at the time of the offense to apply to

reclassify or reduce that conviction to a misdemeanor.

(§ 1170.18, subds. (f)-(g).)

Proposition 47 added or amended certain sections of the Penal Code to define crimes eligible for reclassification from a felony to a misdemeanor. (*See People v. Shabazz* (2015) 237 Cal.App.4th 303, 308 [“[Proposition 47] added sections 459.5 [shoplifting], 490.2 [petty theft] and 1170.18 to the Penal Code; amended sections 473 [forgery related to checks, bonds, bank bills, notes, etc.], 476a [insufficient fund checks, drafts, or bank orders], 496 [receipt of stolen property] and 666 [petty theft with a prior] of the Penal Code; and amended Health and Safety Code sections 11350 [possession of designated controlled substances], 11357 [possession on school grounds] and 11377 [unauthorized possession of controlled substance”].)

Appellant’s robbery conviction is not subject to reclassification because robbery is not one of the offenses within the scope of Proposition 47. (*See People v. Shabazz, supra*, 237 Cal.App.4th at p. 308; *People v. Acosta* (2015) 242 Cal.App.4th 521, 526 [crime not mentioned in list of offenses reduced to misdemeanors is not within purview of Proposition 47]; *People v. Sherow* (2015) 239 Cal.App.4th 875, 878 [“petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing”].) Proposition 47 provides for reclassification of the same offense (i.e. petty theft) from a felony to a misdemeanor where the offense was an eligible offense at the time it was committed. It does not, however, allow for reclassification of a noneligible offense (robbery) to an eligible offense (petty theft), or alter the nature of the crime. Thus, the trial court properly denied the petition.

Appellant has, by virtue of counsel’s compliance with the

People v. Wende procedure and our review of the record, received adequate and effective appellate review of the order denying his petition. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-279.)

DISPOSITION

The order denying appellant's petition for reclassification is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.