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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.

THOMAS D. BRALEY,

Defendant and Appellant.

B272446

(Los Angeles County
Super. Ct. No. BA296474)

APPEAL from an order of the Superior Court of
Los Angeles County, Douglas Sortino, Judge. Affirmed.

David M. Thompson, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Thomas D. Braley appeals from an order granting his petition for resentencing under Proposition 47 (Pen. Code, § 1170.18).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2006, an information was filed alleging that Braley committed count 1, second degree robbery (§ 211) and count 2, petty theft with a prior (§ 666). The information also alleged that Braley had two prior strikes (one for robbery and one for attempted robbery) within the meaning of the Three Strikes law and two prior prison terms within the meaning of section 667, subdivision (a)(1). A jury, on March 7, 2007, found Braley guilty of both counts and of the prior conviction allegations. He was sentenced, on April 23, 2007, to 35 years to life on count 1 (25 years to life plus two 5-year terms for two prior convictions under section 667, subdivision (a)(1)) and to 25 years to life on count 2, stayed under section 654.

After the passage of Proposition 47 in 2014, Braley filed, on February 25, 2016, a motion to reduce his sentence under that law. On March 7, 2016, the trial court reduced the sentence on count 2 (petty theft with a prior) to a misdemeanor, resentenced Braley to 365 days, and stayed the sentence on count 2.

¹ All further undesignated statutory references are to the Penal Code.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues and which asked this court to conduct an independent review of the record, under *People v. Wende* (1979) 25 Cal.3d 436, 441. By letter dated November 10, 2016, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. After we granted appellant an extension of time to file a brief or letter, he filed a brief entitled "Request the Use of 'Complete' Proposition-47 of 02/16/2016 as 'Opening Brief.'"

Proposition 47 reduces certain drug and theft offenses to misdemeanors, unless committed by ineligible defendants.

(*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.)

Proposition 47 thus provided, in part: "(a) A person currently serving a sentence for a conviction . . . of a felony . . . who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense may petition for a recall of sentence . . . to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act."

(Former § 1170.18, subd. (a), italics added.) The trial court here reduced Braley's conviction of petty theft with a prior (§ 666) to a misdemeanor under Proposition 47. Proposition 47 does not apply to Braley's conviction for second degree robbery.

We have examined the record and are satisfied appellant's attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The order is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

GOSWAMI, J.*

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