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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.

TONY LUPIAN,

Defendant and Appellant.

B263382

(Los Angeles County
Super. Ct. No. VA058652)

APPEAL from an order of the Superior Court of Los Angeles County. Olivia Rosales, Judge. Affirmed.

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Tony Lupian appeals from an order denying his application requesting the court to designate his felony conviction for burglary of a vehicle as a misdemeanor pursuant to the Safe Neighborhoods and Schools Act, commonly known as Proposition 47. (Pen. Code, § 1170.18, subd. (f)).¹ We appointed counsel to represent defendant.

On November 19, 2015, counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues on appeal and requesting that we independently review the record to determine if the lower court committed any error. On the same date, appointed counsel sent the appellate record and a copy of his opening brief to defendant and notified him that he could submit a supplemental brief within 30 days.

Defendant filed a supplemental brief in which he asserts that his conviction qualifies for misdemeanor reclassification. We have reviewed the record on appeal and considered defendant's supplemental brief. We conclude that the appeal raises no arguable issues and affirm the court's order.

DISCUSSION

On November 4, 2014, voters enacted Proposition 47, which made certain crimes misdemeanors that previously had been felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Specifically, the proposition added or amended sections 459.5, 473, 476a, 490.2, 496, 666, and Health and Safety Code sections 11350, 11357, 11377. Proposition 47 did not amend the statute defining burglary (§ 459) or the statute establishing the punishment for burglary (§ 461).

Proposition 47 also enacted section 1170.18, a resentencing provision. Under section 1170.18, subdivision (f), a “person who has completed his or her sentence for a conviction . . . of a felony . . . who would have been guilty of a misdemeanor [if Proposition 47 had] been in effect at the time of the offense, may file an application . . . to have the felony conviction or convictions designated as misdemeanors.” Defendant filed his application pursuant to this provision.

¹ All subsequent statutory references are to the Penal Code unless otherwise indicated.

Here, the trial court correctly denied the application on the ground that defendant's conviction is ineligible for reclassification under Proposition 47. In 2000 defendant was convicted of burglary under section 459. Because Proposition 47 did not amend section 459 or change the punishment for its violation, his conviction would have been the same even if Proposition 47 had "been in effect at the time of the offense." (§ 1170.18, subd. (f).) Defendant's conviction is therefore ineligible for designation as a misdemeanor. (See *People v. Acosta* (2015) 242 Cal.App.4th 521, 526; *People v. Gonzales* (2015) 242 Cal.App.4th 35, 41.)

In his supplemental brief, defendant refers to a case titled, *People v. Juan Manuel Cruz Molina*. He asserts that Cruz Molina's felony conviction for violating section 459 was subsequently designated a misdemeanor. Defendant states that the *Cruz Molina* case originated in the Norwalk branch of the Los Angeles County Superior Court, but he provides no citation, case number, or other identifying information about the case. Only a published appellate opinion is precedent we may consider, and our research revealed no appellate case involving Cruz Molina. Therefore, even assuming that Mr. Cruz Molina succeeded in having his burglary conviction redesignated as a misdemeanor, such success does not aid defendant.

Based on our review of the record and consideration of defendant's arguments, we conclude that the appeal raises no arguable issues and are satisfied that defendant's attorneys have fully complied with their responsibilities. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The March 12, 2015, order denying defendant's application to reduce his felony burglary conviction to a misdemeanor is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.