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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS ORTIZ, JR.,

Defendant and Appellant.

2d Crim. No.B284411
(Super. Ct. No. 2004050653)
(Ventura County)

In *People v. Hatt* (2018) 20 Cal.App.5th 321 (*Hatt*), we held that “a person who suffers a disqualifying conviction after filing a redesignation application but prior to the trial court’s ruling on that application is barred from relief under [Penal Code] section 1170.18.” (*Hatt* at p. 324.) The *Hatt* decision guides our analysis of this Proposition 47 appeal.

Appellant Jose Luis Ortiz, Jr. applied to have his 2006 felony drug conviction redesignated as a misdemeanor. The trial court continued the matter pending the outcome of an attempted murder case against appellant. After appellant was convicted the

court denied his redesignation request. Following *Hatt*, we affirm the denial of appellant's application.

FACTS AND PROCEDURAL HISTORY

In 2006, appellant pled guilty to felony possession of methamphetamine (Former Health & Saf. Code, § 11377), and was granted probation for a period of 36 months. He violated the conditions of probation and was sentenced in 2007 to a 16-month prison term.

In 2012, appellant was charged with attempted murder. In June 2016, before the case came to trial, he applied to have his drug conviction redesignated as a misdemeanor.

The People requested a continuance until "after the completion of the defendant's pending trial for a super strike offense." Appellant argued that a continuance was unnecessary because the pending charge was not a "prior conviction" that disqualifies him from Proposition 47 relief. The trial court granted a continuance and tentatively denied appellant's resentencing application, pending the outcome of his trial.

Appellant was convicted of attempted murder on January 31, 2017, along with other charges and enhancements. He received an indeterminate life sentence in April 2017.

The trial court denied appellant's application on June 21, 2017. The court interpreted Proposition 47 to provide relief for nonviolent offenders, but found that appellant does not qualify for resentencing owing to his recent violent felony conviction.

DISCUSSION

With the passage of Proposition 47, certain felony drug and theft offenses were reduced to misdemeanors. The law amended Health and Safety Code section 11377, so that possession of a controlled substance is now a misdemeanor "unless the

perpetrator has one or more prior convictions for so-called super strike offenses.” (*People v. Bradshaw* (2016) 246 Cal.App.4th 1251, 1256; *People v. Casillas* (2017) 13 Cal.App.5th 745, 748.) Attempted murder is a super strike offense. (Pen. Code, § 667, subd. (e)(2)(C)(iv)(IV).) ¹

Proposition 47 added section 1170.18, “to allow certain convicted felons to petition the court to have their felony convictions designated as misdemeanors and their penalties reduced.” (*People v. Walker* (2016) 5 Cal.App.5th 872, 875.) The resentencing provisions “[shall] not apply to a person who has one or more prior convictions for an offense specified in . . . Section 667,” i.e., a super strike offense. (§ 1170.18, subd. (i).)

Appellant contends that the trial court misinterpreted section 1170.18 when it deemed his 2017 attempted murder conviction to be a “prior” conviction of a super strike offense, by equating a pending case with a conviction. Appellant asserts that he qualified for a reduction of his 2006 drug offense because he did not have a disqualifying super strike when he applied for resentencing in 2016, and the court abused its discretion by continuing the hearing until he was convicted in 2017.

The contentions raised here were addressed in *Hatt*. Hatt pled guilty and was imprisoned in 2003 for methamphetamine possession. He sought redesignation of his conviction in 2016. The prosecutor opposed the application, due to a pending murder charge against Hatt. The trial court tentatively denied Hatt’s application and continued the hearing while awaiting the murder trial. In 2017, Hatt was convicted of murder. The court then denied Hatt’s application. (*Hatt, supra*, 20 Cal.App.5th at p. 324.)

¹ Unlabeled statutory references are to the Penal Code.

Hatt answers the questions posed in appellant's brief.

First, the trial court did not err in tentatively denying appellant's application without prejudice in 2016, while his super strike case was pending. This was not a final ruling, and it properly allowed the court to revisit the application at the conclusion of the attempted murder trial. (*Hatt, supra*, 20 Cal.App.5th at pp. 324-325.)

Second, the trial court did not abuse its discretion by continuing the hearing. There was good cause for a continuance because the outcome of appellant's trial was material to a final ruling on his application. The court accomplished substantial justice by ensuring that someone convicted of a super strike (attempted murder) would not benefit from Proposition 47's redesignation provisions. (*Hatt, supra*, 20 Cal.App.5th at pp. 325-326; § 1050, subd. (e).)

Third, appellant did not qualify for a reduction of his felony sentence under Proposition 47, based on his post-application attempted murder conviction. Resentencing is not available to persons who have a prior conviction for a super strike offense. (§ 1170.18, subd. (i).) The word "prior" conviction in section 1170.18, subdivision (i), allows two reasonable constructions: it could mean "prior" to the conviction for which relief is sought, or it could mean a conviction occurring "prior" to the court's ruling on a petition for relief. The statute does not explain "[p]rior to what?" (*People v. Casillas, supra*, 13 Cal.App.5th at pp. 750-751, quoting *People v. Montgomery* (2016) 247 Cal.App.4th 1385, 1387.)

This Court concluded that "voters deemed immaterial whether an applicant's disqualifying conviction occurred before, simultaneously with, or after the conviction for which

redesignation is sought.” (*Hatt, supra*, 20 Cal.App.5th at p. 327.) Thus, a disqualifying prior conviction “refers to a conviction suffered any time before the court’s ruling on an application to have a felony conviction [redesignated] a misdemeanor.” (*Id.* at p. 328, quoting *People v. Walker, supra*, 5 Cal.App.5th at p. 876.)

In light of *Hatt*, we conclude there is no error in (1) the trial court’s granting a continuance pending the outcome of appellant’s trial on a super strike or (2) the court’s denial of appellant’s application. Appellant’s conviction for attempted murder disqualified him from relief under Proposition 47. In a supplemental letter brief responding to our request to address *Hatt*, appellant concedes that the court’s order should be affirmed. We agree.

DISPOSITION

The judgment (order denying a request to redesignate a felony conviction as a misdemeanor) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Bruce A. Young, Judge
Superior Court County of Ventura

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