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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.

JAMES DANIEL ELLIOTT,

Defendant and Appellant.

2d Crim. No. B283203
(Super. Ct. No. F474516001)
(San Luis Obispo County)

James Daniel Elliott appeals an order denying his petition to reclassify his 2012 conviction for possession of methamphetamine as a misdemeanor pursuant to Proposition 47, “the Safe Neighborhoods and Schools Act.” (Pen. Code, § 1170.18, subds. (f) & (g).)¹ We reverse and remand the matter to the trial court with directions to enter a new order designating the conviction as a misdemeanor. (*Ibid.*)

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

FACTUAL AND PROCEDURAL HISTORY

On June 28, 2012, Elliott entered a nolo contendere plea to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Pursuant to a plea agreement, the trial court sentenced Elliott to a three-year county jail term. The court also imposed various fines and fees, awarded Elliott 124 days of presentence custody credit, and dismissed a remaining drug count and two prior prison term allegations.

Nearly five years later, Elliott petitioned the trial court for relief pursuant to Proposition 47. (§ 1170.18, subds. (a), (f) & (g).) Elliott declared under penalty of perjury that he had completed his sentence and that he has not been convicted of any enumerated disqualifying offenses set forth in section 1170.18, subdivision (i).

On April 24, 2017, the trial court held a hearing and denied Elliott’s reclassification motion “without argument or comment and . . . on the papers filed.” The hearing was not reported and the appellate record does not contain any written arguments supporting or opposing the petition.²

Elliott now appeals the post-judgment order denying his reclassification petition.

On September 11, 2017, we ordered the trial court to settle a statement regarding the hearing on Elliott’s reclassification petition. On December 7, 2017, we received a stipulation regarding the settled statement on appeal, stating in part: “The

² We ordered the trial court to transmit the court file regarding this case (No. F474516001). We have reviewed the file contents; they do not contain any written arguments regarding the motion or an explanation for the court’s ruling. In sum, the file does not contain any additional information relevant to this particular issue on appeal.

proceedings were not reported. The Court had read and considered the Defense moving papers, the People's responsive papers and the Defense reply to that response. The matter was submitted by both sides without argument or comment and the Court denied the motion [b]ased on the papers filed."

DISCUSSION

Elliott contends that the trial court erred by denying his petition, pointing out that he has completed his three-year county jail term. The Attorney General responds that "further factual development" is necessary and requests that we remand the matter for that reason. He points out that in June 2017, Elliott mailed correspondence to the trial court, stating a return address of state prison.

Proposition 47 reduces many common theft- and drug-related offenses from felonies to misdemeanors for offenders who do not have prior convictions for specified violent or serious offenses. (*People v. DeHoyos* (2018) 4 Cal.5th 594, 597.) A person who has already completed a sentence for a covered offense "may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).) "If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor." (*Id.*, subd. (g)).) No hearing is required unless the applicant requests one. (*Id.*, subd. (h).) No relief is available, however, to a person who has previously been convicted of a "super strike" or an offense requiring registration as a sex offender. (*DeHoyos*, at pp. 598-599; § 1170.18, subd. (i).)

Whether Proposition 47 applies to Elliott's convicted offenses presents a question of statutory interpretation that we

review de novo. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136 [review of reclassification petition].) We also review any factual findings by the trial court for substantial evidence. (*Ibid.*) A petitioner seeking resentencing pursuant to Proposition 47 bears the burden of establishing his eligibility for resentencing. (*Ibid.*)

In the interest of judicial economy, we take judicial notice of the appellate record in Elliott’s second pending appeal, *People v. Elliott*, case No. B283212. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) That appeal concerns Elliott’s resentencing petition following his 2014 nolo contendere plea to assault by force, with admissions that he served three prior prison terms and committed the assault while on bail. That plea resulted in a nine-year prison sentence. The probation report prepared in that matter indicates that Elliott committed the February 2014 assault offense within “a few days” of his release from jail custody for the drug offense in this appeal. The probation report also reveals Elliott’s long history of drug convictions, but no super-strike or disqualifying offenses within section 1170.18, subdivision (i). A second remand for “further factual development” is an unnecessary use of judicial resources.

We reverse the order denying the reclassification petition and remand the matter to the trial court with directions to enter a new order designating the possession of methamphetamine conviction at issue herein as a misdemeanor.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Hugh F. Mullin, Judge

Superior Court County of San Luis Obispo

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill, Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.