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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME MORALES,

Defendant and Appellant.

B267314

(Los Angeles County  
Super. Ct. No. LA025038)

APPEAL from an order of the Superior Court of Los Angeles County, Alan Schneider, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On August 1, 1997, Jaime Morales pleaded guilty to committing attempted first degree burglary, a felony, and was sentenced to a one-year state prison term.

In August 2015, Morales filed “a motion for modification of sentence pursuant to Penal Code section 1170[, subdivision] (d),” which the trial court deemed an application to have the 1997 felony conviction designated as a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18).<sup>1</sup> The trial court summarily denied the application on August 11, 2015, finding Morales’ conviction in 1997 for “attempted residential burglary” was an offense that did not qualify for designation as a misdemeanor under Proposition 47. Morales filed a timely notice of appeal.

We appointed counsel to represent Morales on appeal. After an examination of the record, counsel filed an opening brief in which no issues were raised. On February 26, 2016, we advised Morales he had 30 days in which to personally submit any contentions or issues he wished us to consider. On March 9, 2016, the notice was returned by the California Correctional Institution marked “Return To Sender Unclaimed Unable To Forward.” A stamp on the returned envelope reads “RETURN TO SENDER NAME AND CDC# DO NOT MATCH.”

On June 9, 2016, we mailed a second notice to Morales in the name of Rene Benites, the name under which he was housed in state prison. On July 8, 2016, we received a one-page typed supplemental brief from Morales (Benites) in which he acknowledged having pleaded guilty in 1997 to “residential burglary.” However, he claimed that he had been misled by his

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<sup>1</sup> A copy of the application is not part of the record on appeal.

defense counsel, the prosecutor and the court which sentenced him, and that he was “guilty at most of trespassing. . . . [He] never entered this unoccupied residence.”

We have examined the record and are satisfied Morales’ appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

Proposition 47 created a resentencing provision: Penal Code<sup>2</sup> section 1170.18. Under section 1170.18, a person “currently serving” a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170, subd. (a).)

“The burden of proof lies with [the] defendant to show the facts demonstrating his eligibility for relief . . . .” (*People v. Page* (2015) 241 Cal.App.4th 714, 719, fn. 2.) “[I]t is entirely appropriate to allocate the initial burden of proof to the petitioner to establish the facts upon which his or her eligibility is based.” (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880 [the defendant failed to meet his burden under § 1170.18 as he did not prove that the goods he was convicted of taking had a value of \$950 or less].)

Here, Morales failed to show any facts to demonstrate his eligibility for relief. Construed generously, his argument is that trespass on a residential property is the type of theft conviction

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2 All further statutory references are to the Penal Code.

which the voters intended to reclassify when they approved Proposition 47. The voters, however, made only one amendment to the definition of burglary for purposes of resentencing: “Proposition 47 added section 459.5 to the Penal Code, creating ‘a new crime of “shoplifting,” a misdemeanor offense that punishes certain conduct that previously would have qualified as a burglary.’” (*People v. Hallam* (2016) \_\_\_ Cal.App.5th \_\_\_, \_\_\_ [2016 Cal.App.LEXIS 807, \*4], fn. omitted.) No other amendments were made to the definition of burglary nor other categories of related conduct reclassified as misdemeanor offenses.

Morales is not entitled to resentencing under section 459.5, as that section is expressly limited to entry into commercial establishments. (*People v. Hallam, supra*, \_\_\_ Cal.App.5th at p. \_\_\_ [2016 Cal.App.LEXIS at p. \*7].) Given that Morales pleaded guilty to attempted burglary of a residence and even in his brief on appeal indicates that he was on the premises of a residence, his conviction cannot be resentenced as a misdemeanor under section 459.5. The voters enacting Proposition 47 did not carve out any burglaries relating to residences and allow them to be recharged as misdemeanors. On this record, the trial court correctly ruled that attempted first degree residential burglary is not one of the theft offenses which a defendant may seek to have designated as a misdemeanor pursuant to section 1170.18, subdivision (f).

Morales’ contention that he was ignorant of the law when he entered his guilty plea in 1997, or mislead in that process by his attorney and court personnel, is beyond the scope of this appeal from the trial court’s August 11, 2015 order. Such claim would need to have been brought as a direct appeal or habeas

petition; it cannot be raised as a basis for resentencing under Proposition 47.

## **DISPOSITION**

The order is affirmed.

KEENY, J.\*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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