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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JASON JONES, Defendant and Appellant.	B277755 (Los Angeles County Super. Ct. No. BA444812)

APPEAL from an order of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

Lynette Gladd Moore, 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, Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Jason Jones appeals from an order denying his petition for resentencing under Penal Code section 1170.18,[1] added by Proposition 47 in 2014. By its own terms, section 1170.18 does not allow resentencing for crimes committed after the effective date of the voter initiative. We affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

In February 2016, appellant took a can of soda from a store and attempted to leave without paying for it. When confronted, he kicked and punched one person and elbowed another. He then announced he had a knife, and a knife was found during a search of his person.

Appellant was charged with two counts of second degree robbery and a third count of grand theft from a person. (§§ 211, 487, subd. (c).) On June 9, 2016, he entered a no contest plea to count 3 as a stipulated felony and was sentenced to two years in jail. The robbery counts were dismissed. Less than two weeks later, appellant petitioned for resentencing under section 1170.18. The petition was initially granted. In September 2016, the court changed the order granting the petition nunc pro tunc and reimposed the original sentence.

This appeal followed.

DISCUSSION

The only issue on appeal is whether appellant is entitled to

[1] Subsequent statutory references are to the Penal Code.

resentencing under section 1170.18.[2] The interpretation of statutes and voter initiatives is an issue of law that we review de novo. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) "'[W]e turn first to the language of the statute, giving the words their ordinary meaning.' [Citation.] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme. [Citation.] When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' [Citation.] If a penal statute is still reasonably susceptible to multiple constructions, then we ordinarily adopt the '"construction which is more favorable to the offender. . . ."' [Citation.]" (*Id*. at pp. 685–686.)

Appellant argues that the statutory language "does not delimit those who are eligible for relief" under section 1170.18. That is incorrect. As originally enacted, section 1170.18, subdivision (a) provided: "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section . . . had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with . . . sections [that] have been amended or added by this act." Read in isolation, the word "currently" is ambiguous because it could refer to the time when Proposition 47 was passed or to the time when a defendant files a

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[2] Appellant represents that he is appealing from an order after judgment, and the notice of appeal states the appeal is based on matters not affecting the validity of his plea.

petition for resentencing.[3] But the rest of the statutory language qualifies the eligible offense as one that "would have been . . . a misdemeanor under the act that added this section . . . had this act been in effect at the time of the offense." The qualifying language is structured as a counterfactual conditional clause, which indicates that the eligible offense was not actually a misdemeanor when committed because Proposition 47 was not yet in effect at that time. (See Eastwood, *Oxford Guide to English Grammar* (1994) p. 337 [past perfect conditional "refers to something unreal"].) Hence, read as a whole, section 1170.18, subdivision (a) applies to defendants serving sentences for felonies committed before Proposition 47's effective date where those felonies were later reclassified as misdemeanors under the voter initiative.

The ballot pamphlet supports this interpretation. It explains that Proposition 47 makes "two changes that would reduce the state prison population and associated costs. First, changing future crimes from felonies and wobblers to misdemeanors would make fewer offenders eligible for state prison sentences. . . . Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years after the measure becomes law." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by

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[3] The Legislature has since cleared up this ambiguity in amending section 1170.18, subdivision (a) to clarify that in order to qualify for relief under that subdivision, a person must have been serving a sentence on November 5, 2014, the effective date of Proposition 47. (See § 1170.18, subd. (a), as amended by Stats. 2016, ch. 767, § 1, eff. Jan. 1, 2017.)

Legislative Analyst, p. 37.) As explained to the voters, Proposition 47 was intended to reclassify "future" crimes and allow resentencing for "inmates currently in prison," which may only be understood to mean that crimes would be reclassified prospectively, and the resentencing provision would apply retrospectively. (See *People v. Bush* (2016) 245 Cal.App.4th 992, 1000 [recognizing that Proposition 47 offers prospective and retrospective relief].)

Here, appellant committed his offense after the passage of Proposition 47, a circumstance placing him outside the scope of the resentencing provision in section 1170.18, subdivision (a). Appellant claims he must be included within the scope of that provision as a person who "otherwise had no recourse." That, too, is incorrect. By the time appellant stole the can of soda, grand theft from a person already was a misdemeanor if the value of the property taken did not exceed $950, and the defendant did not have disqualifying priors. (See §§ 490.2, subd. (a); 487, subd. (c); *Harris v. Superior Court* (2016) 1 Cal.5th 984, 988.) Appellant could have challenged the factual basis of his felony no contest plea, or he could have moved to withdraw his plea. His situation is different from that of an inmate who is entitled to resentencing under section 1170.18 because of a plea that preceded the passage of Proposition 47. Section 1170.18 applies to such persons, as seeking relief under its provisions would be the person's only recourse. (See *Harris,* at p. 989.) But section 1170.18, subdivision (a) does not apply to appellant, whose offense and plea followed the passage of the voter initiative and who could have taken advantage of the prospective relief it offered.

Respondent cites *People v. Gonzales* (2016) 6 Cal.App.5th 1067, 1070, review granted Feb. 15, 2017, S240044, and *People v. Johnston* (2016) 247 Cal.App.4th 252, 256, review granted July 13, 2016, S235041, for the proposition that § 1170.18 provides retrospective relief for a previous conviction. Neither case dealt with the issue of resentencing for a crime committed after the effective date of Proposition 47, and that is not the issue on which the Supreme Court granted review.

Since section 1170.18 does not provide for resentencing where the offense was committed after the effective date of Proposition 47, appellant is not entitled to relief under that section.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.