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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.

ROBERT LEE SHOULDERS,

Defendant and Appellant.

B288198

(Los Angeles County
Super. Ct. No. TA043117)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Robert Lee Shoulders appeals from a postconviction order denying his petition to recall his sentence under Proposition 47. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

In 1996, a jury convicted Shoulders of possession of a firearm by an ex-felon under former Penal Code section 12021, subdivision (a)(1).¹ He was sentenced under the “Three Strikes” law to 25 years to life in prison.

In January 2018, Shoulders filed a petition for relief under Proposition 47. He asserted that his conviction should be reduced to a misdemeanor because the firearm he possessed was worth less than \$950.

On January 18, 2018, the trial court denied the petition because Shoulders’s conviction for being a felon in possession of a firearm is not a crime for which relief is available under Proposition 47. Shoulders timely appealed.

We appointed counsel to represent Shoulders in this matter. On May 8, 2018, Shoulders’s counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues on appeal and requesting that we independently review the record to determine if the lower court committed any error. Counsel sent to Shoulders a copy of his brief and the transcript of the record on appeal, and informed Shoulders of his right to file a supplemental brief.

¹ At the time Shoulders committed his offense, section 12021, subdivision (a)(1), provided: “Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, . . . who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.” (Former Pen. Code, § 12021, subd. (a)(1).)

On May 31, 2018, Shoulders filed a supplemental brief.

Our review of the record disclosed that Shoulders's Proposition 47 petition was not included within the clerk's transcript. The Superior Court Clerk acknowledged the omission, stating that, despite "a thorough search," Shoulders's petition was not found in the clerk's file.

We requested that Shoulders's counsel attempt to locate a copy of the missing petition and move to augment the record with the copy. Counsel did so; he obtained a copy of the petition from Shoulders and filed a motion to augment the record with the document. We granted the motion.

DISCUSSION

Proposition 47 reduced to misdemeanors certain theft-related and drug-related offenses that had previously been classified as felonies. (*People v. Romanowski* (2017) 2 Cal.5th 903, 907; *People v. Rivera* (2015) 233 Cal.App.4th 1089, 1091.) In particular, the initiative enacted Penal Code section 490.2, which provides that, generally, "obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor."

Proposition 47 further provided that one who was serving a felony prison sentence when Proposition 47 was enacted and who "would have been guilty of a misdemeanor" if Proposition 47 had been in effect at the time the inmate committed his crime, could petition the trial court to recall his sentence and request to be resentenced in accordance with the newly amended version of the statute. (Pen. Code, § 1170.18, subd. (a).)

Shoulders contends that his conviction for being a felon in possession of a firearm should be reduced to a misdemeanor under Penal Code section 490.2. We reject this argument because

Penal Code section 490.2 applies to the act of “obtaining . . . property by theft”; it does not apply to the act of being a felon in possession of a firearm, regardless of the firearm’s value.

Shoulders relies on *People v. Van Orden* (2017) 9 Cal.App.5th 1277 (*Van Orden*). In that case, the defendant was convicted of violating Vehicle Code section 10851, which makes it a crime to drive or take another’s vehicle without the owner’s consent and with the intent to deprive the owner of possession of the vehicle. The car the defendant took was worth \$700. The appellate court held that when the crime is based on *taking* the vehicle, not *driving* the vehicle after it was taken, Penal Code section 490.2 applies. (*Van Orden, supra*, 9 Cal.App.5th at pp. 1283, 1288-1289.) Under the circumstances in that case, the defendant was entitled to relief under Proposition 47. (*Ibid.*) The California Supreme Court subsequently came to the same conclusion in *People v. Page* (2017) 3 Cal.5th 1175, 1187-1188.)

Van Orden and *Page* do not help Shoulders because Shoulders was not convicted of violating Vehicle Code section 10851, and the rationale for the holdings in those cases does not apply to convictions for being a felon in possession of a firearm.

Because Shoulders is not eligible for resentencing under Proposition 47, we do not reach his additional argument that his strike priors for robbery and burglary do not disqualify him from relief. (See Pen. Code, § 1170.18, subd. (i).)

After our review of the record, we are satisfied that Shoulders’s counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

BENDIX, J.