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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN B. HARRELL,

Defendant and Appellant.

2d Crim. No. B275532
(Super. Ct. No. BA400374-01)
(Los Angeles County)

Stephen B. Harrell appeals an order denying his motion for resentencing under Proposition 47. (Pen. Code, § 1170.18.)[1] In 2013, he was convicted of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)), and the trial court found he had served six prior prison terms (§ 667.5, subd. (b) (hereafter "section 667.5(b)"). In 2015, three of his prior felony convictions (Health & Saf. Code, § 11350), which

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

were used to enhance his sentence under section 667.5(b), were reclassified as misdemeanors under Proposition 47. We conclude, among other things, that the trial court correctly ruled the reclassification of theses offenses from felonies to misdemeanors did not invalidate his section 667.5(b) prior prison term enhancements. We affirm.

FACTS

After his 2013 conviction for assault, Harrell waived a court trial and "admitted he had served six prior prison terms." (§ 667.5(b).) He was sentenced to an aggregate 12-year prison term--six years for the assault conviction and "six years for the six prior prison terms." (*Ibid.*)

Three of his prior felony convictions for which he served prison terms, and were subject to the section 667.5(b) enhancements, were for violation of Health and Safety Code section 11350. After the passage of Proposition 47, these Health and Safety Code section 11350 felonies were reclassified as misdemeanors. (Prop. 47, § 11.)

In 2015, Harrell filed a motion for resentencing under Proposition 47. The trial court reduced these three felonies to misdemeanors.

In 2016, Harrell filed a motion to "strike the one year prison prior enhancements." He claimed "[t]hese priors are no longer eligible as one year enhancements under [section] 1170.18." (Prop. 47.) The trial court ruled the motion to "strike a prison prior enhancement, pursuant to Penal Code section 1170.18, is heard [and] denied."

DISCUSSION

Removing Prior Prison Enhancements under Proposition 47

Harrell contends he was "entitled to resentencing, because prison priors for which enhancements were imposed have since been reduced to misdemeanors under Proposition 47."

The People contend reclassification of an offense under section 1170.18 (Prop. 47) does not invalidate an enhancement under section 667.5, subdivision (b). We agree.

Harrell notes "the overall tide of Court of Appeal opinion has been against him on this issue." But this issue is currently before the California Supreme Court in *People v. Valenzuela*, review granted March 7, 2016, S232900. The Court of Appeal opinion in *Valenzuela* held that the redesignation of a defendant's prior felony as a misdemeanor under Proposition 47 does not invalidate his or her prior prison term sentence enhancement. (§ 667.5(b).)

"'In interpreting a voter initiative like [Proposition 47], we apply the same principles that govern statutory construction.'" (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1099.) """The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers . . . ."'" (*Ibid.*) We start by looking to the language of the proposition. (*Id.* at p. 1100.)

"Proposition 47 . . . created a new resentencing provision . . . ." (*People v. Rivera*, *supra*, 233 Cal.App.4th at p. 1092.) It reclassified certain felonies as misdemeanors. These reclassifications are set forth in nine sections of Proposition 47. (Prop. 47, §§ 5-13.) But none of these sections applies to enhancements, such as section 667.5(b). This omission is significant. It shows the lack of authority to vacate

the section 667.5(b) enhancements that were part of the 2013 judgment. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 313 [a defendant's rights under Proposition 47 are limited to the "specific procedures" set forth in that act].) Proposition 47 establishes a new comprehensive statutory scheme for resolving resentencing claims. Where a statute creates a new right and "a comprehensive and detailed remedial scheme for its enforcement, the statutory remedy is exclusive." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 79.)

Moreover, section 14, subdivision (n) of Proposition 47 provides, "Nothing in this and related sections is intended *to diminish or abrogate the finality of judgments in any case not falling within the purview of this Act*." (Italics added.) The enhancements do not fall "within the purview" of sections 5 through 13 of Proposition 47, and they are part of the final 2013 judgment which is not subject to abrogation. (Prop. 47, § 14, subd. (n); *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287; *People v. Hayes* (1989) 49 Cal.3d 1260, 1274; *People v. Jones* (2016) 1 Cal.App.5th 221, 230, review granted Sept. 14, 2016, S235901.)

Harrell notes that section 1170.18, subdivision (k) provides, "*Any* felony conviction that is recalled and resentenced . . . or designated as a misdemeanor under [Proposition 47] shall be considered a misdemeanor *for all purposes* . . . ." He claims that because the crimes that subjected him to the enhancements are now reclassified as misdemeanors, Proposition 47 applies retroactively to invalidate the section 667.5(b) enhancements in the 2013 judgment.

But "the language in subdivision (k) of section 1170.18 that a conviction that is reduced to a misdemeanor

under that section '*shall be . . . a misdemeanor for all purposes'* is not significantly different from the language in section 17(b), which provides that after the court exercises its discretion to sentence a wobbler as a misdemeanor, and in the other circumstances specified in section 17(b), '*it is a misdemeanor for all purposes*.'" (*People v. Rivera*, *supra*, 233 Cal.App.4th at p. 1100.) "[I]n construing this language from section 17(b), the California Supreme Court has stated that the reduction of the offense to a misdemeanor does not apply retroactively." (*Ibid.*) "We presume the voters 'intended the same construction' for the language in section 1170.18, subdivision (k), 'unless a contrary intent clearly appears.'" (*Ibid.*) "Nothing in the text of Proposition 47 or the ballot materials for Proposition 47" shows such a contrary intent. (*Ibid.*; *Tapia v. Superior Court*, *supra*, 53 Cal.3d at p. 287; *People v. Hayes*, *supra*, 49 Cal.3d at p. 1274 [a new statute is "generally presumed to operate prospectively"].) "If ultimately a misdemeanor sentence is imposed, the offense is a misdemeanor from that point on, *but not retroactively* . . . ." (*People v. Feyrer* (2010) 48 Cal.4th 426, 439, italics added.)

The People also note that the section 667.5(b) enhancements were imposed as part of the 2013 judgment of conviction for Harrell's assault offense. They correctly point out that because the assault judgment was not set aside, his recent motion to "strike" cannot invalidate the enhancements that were previously imposed in 2013. (*People v. Park*, *supra*, 56 Cal.4th at p. 802; *People v. Jones*, *supra*, 1 Cal.App.5th at p. 230 [section 1170.18 provides no "procedure for the retroactive dismissal or striking of enhancements"].)

"[T]he voters set forth specific procedures for securing the lesser punishment to eligible persons . . . . These are *the sole remedies* available under Prop. 47 . . . ." (*People v. Shabazz*, *supra*, 237 Cal.App.4th at p. 313, italics added.) The relief Harrell seeks is not authorized by Proposition 47. (*People v. Jones*, *supra*, 1 Cal.App.5th at p. 230.)

Equal Protection

Harrell contends applying Proposition 47 prospectively to prevent him from invalidating his section 667.5(b) enhancements violates equal protection. He suggests that because defendants with Health and Safety Code section 11350 convictions after the passage of Proposition 47 would not be subject to section 667.5(b) enhancements, he has a constitutional right to retroactively vacate his pre-Proposition 47 enhancements. We disagree.

Proposition 47 authorizes new reductions of certain crimes and sentences that were previously imposed. But it also precludes relief for judgments not falling within its provisions. (Prop. 47, § 14, subd. (n).) Statutes may provide defendants with current convictions relief which will not be available to defendants with prior convictions. Such difference in treatment between the two classes of defendants is not unconstitutional. (*People v. Floyd* (2003) 31 Cal.4th 179, 189.)

"[P]unishment-lessening statutes given prospective application do not violate equal protection." (*In re Bender* (1983) 149 Cal.App.3d 380, 388; see also *People v. Floyd*, *supra*, 31 Cal.4th at p. 189 ["'[A] reduction of sentences only prospectively from the date a new sentencing statute takes effect is not a denial of equal protection'"]; *People v. Jones*, *supra*, 1

Cal.App.5th at p. 232 [no equal protection violation for not applying Proposition 47 retroactively].)

We have reviewed Harrell's remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Henry J. Hall, Judge

Superior Court County of Los Angeles

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

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