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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.

JOSEPH ALLAN LITTLE,

Defendant and Appellant.

B278285

(Los Angeles County
Super. Ct. No. BA344533)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Robert J. Perry, Judge. Affirmed.

Benjamin P. Lechman, 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, William H. Shin and Mary Sanchez, Deputy
Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Joseph Allan Little was convicted of 51 counts of forgery, identity theft, grand theft, and other crimes relating to six real estate transactions. He moved to reduce several of his felony forgery convictions to misdemeanors under Proposition 47. The trial court denied his motions, finding that his convictions and sentences were not eligible for reduction under Proposition 47. We agree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We have granted defendant's request to take judicial notice of this court's opinion in the underlying case, *People v. Shelton, et al.* (Apr. 10, 2012, B222428, B225438 [nonpub. opn.]). The details of the crimes are set forth in that opinion, and we derive the facts of the underlying case from that opinion. In short, in 2006, defendant and coconspirators forged grant deeds and other documents, sold and attempted to sell real properties they did not own, and pocketed the proceeds. At trial, a jury convicted defendant and one coconspirator of 51 counts of forgery, identity theft, grand theft, making false financial statements, and other crimes relating to six real estate transactions. As relevant to this appeal, defendant was convicted of 22 counts of forgery under Penal Code section 470, subdivision (a).¹ In 2010, Defendant was sentenced to 27 years and four months in prison. We affirmed defendant's and his coconspirator's convictions in 2012.

On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the following day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) "Proposition 47 makes certain drug- and theft-related

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

offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Id.* at p. 1091.) “Section 473, which prescribes the punishment for forgery, was one of the statutes amended by Proposition 47.” (*People v. Martinez* (2016) 5 Cal.App.5th 234, 240 (*Martinez*).) We discuss section 473 in further detail below.

On July 1, 2016, defendant filed a form motion seeking to reduce his forgery convictions to misdemeanors under Proposition 47. On the form motion, defendant listed three convictions, but he did not identify any count numbers. Defendant also filed two form applications/petitions for resentencing under section 1170.18. One application sought to reduce the sentence for “PC § 470(A); CT 7” and the other sought to reduce the sentence for “PC § 470(A); CT 8.” On each of the two applications, defendant checked the box stating that “the amount in question is not more than \$950.”

The trial court denied defendant’s motions and petitions. In its written order, the court noted that defendant had been convicted of multiple felony counts and “special allegations of taking more than \$150,000 (Penal Code § 12022.6) and fraud loss exceeding \$500,000 (Penal Code § 186.11(a)) were found to be true.” The court also said, “Defendant Little did not suffer a conviction for any felony violation reduced to a misdemeanor by Penal Code § 1170.18. Accordingly, he is not entitled to any relief under that statute.”²

² The court also noted our rejection of a similar Proposition 47 request by the codefendant in the underlying case, Dwight

On August 30, 2016, defendant again filed a form motion to reduce some of his sentences to misdemeanors, along with an attachment seeking sentence reductions for forgery counts 14, 15, 18, 19, 33, 38, 57, 61, and 63, and grand theft count 29. He asserted that these counts were subject to Proposition 47 “based on the proven fact that there is no ‘Monetary Losses’, regarding all of the aforementioned previously designated felony convictions.”

The court denied defendant’s second motion, which the court characterized as a renewed motion. The court stated, “Little’s forgery convictions are not reducible because of the amount of loss caused by his criminal acts. Little was convicted of the special allegations of taking more than \$150,000 (Penal Code § 12022.6) and fraud loss exceeding \$500,000 (Penal Code § 186.11(a).” The court also repeated its earlier holding that defendant’s convictions did not fall under section 1170.18.

Defendant timely appealed.

DISCUSSION

Defendant clarifies in his reply brief that “[t]he forgery convictions at issue in this appeal . . . are contained in counts 16-18. The documents at issue are a residential purchase agreement (count 16), a buyer inspection advisory (count 17), and a grant deed (count 18).” We therefore focus on those convictions alone. Pursuant to the plain language of section 473, these forgery convictions are not eligible for reduction under Proposition 47.

“Prior to Proposition 47, all forgery offenses were ‘wobblers’ meaning they could be charged and punished either as a felony or a misdemeanor. (§§ 17, subd. (b)(1), 473, subd. (a) [‘Forgery is

Rolland Shelton. (See *People v. Shelton*, Nov. 10, 2015, B262081 [nonpub. opn.])

punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.'].) Proposition 47 amended section 473 to add a new subdivision (b) (section 473(b)), which states, in relevant part: ‘Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order, where the value of the check, bond, bank bill, note, cashier’s check, traveler’s check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year. . . .’” (*People v. Bloomfield* (2017) 13 Cal.App.5th 647, 651-652 (*Bloomfield*).)

The Attorney General argues that defendant’s convictions do not fall under the scope of section 473(b). We agree. Based on “the plain meaning of the words in the statute, section 473(b) provides forgery will be classified as a misdemeanor when a defendant has used one of seven specific instruments (check, bond, bank bill, note, cashier’s check, traveler’s check, or money order) valued at \$950 or less.” (*Bloomfield, supra*, 13 Cal.App.5th at p. 652.) If the forgery does not involve one of the seven instruments specified in section 473(b), it may not be classified as a misdemeanor under Proposition 47. “The express identification of those seven instruments in section 473, subdivision (b) excludes from misdemeanor designation forgeries committed with all other instruments.” (*Martinez, supra*, 5 Cal.App.5th at p. 242; see also *Bloomfield, supra*, 13 Cal.App.5th at p. 652 [“the specific language used in section 473(b) means forgery crimes are classified as straight misdemeanors *only* when one of the seven listed instruments is used to commit the crime.”].) Because

defendant's forgery convictions do not involve any of the seven instruments in section 473(b), this section does not apply.

In his reply brief, defendant argues that *Martinez* and *Bloomfield* are "readily distinguishable." He contends that *Martinez* and *Bloomfield* involved credit card transactions and access card forgery, and concludes, "Mr. Little was not convicted of credit card or access card forgery, thus Respondent's citations to these cases are unavailing." Although *Martinez* and *Bloomfield* are factually distinguishable, the courts' interpretation of section 473(b) is squarely applicable: Section 473(b) does not apply to transactions other than the ones specifically listed in the statute.

Defendant also argues that the forged documents in this case—a residential purchase agreement, a buyer inspection advisory, and a grant deed—are "equivalent to the items enumerated within section 473, subdivision (b)." He cites *People v. Chretien* (1902) 137 Cal. 450, in which the evidence showed that the defendant forged a deed to real property. The defendant was charged with forgery under section 470, but he argued that the evidence only supported a charge for passing or publishing "any fictitious bill, note, or check purporting to be the bill, note, or check or other instrument in writing for the payment of money or property" under section 476. The Supreme Court rejected this argument because "Section 476 punishes the making and uttering of certain specified instruments." (*Id.* at p. 453.) On the other hand, section 470 was written very broadly, and therefore "[i]t is quite evident that [section 476] is not framed to cover all the instruments or documents that are embraced in section 470." (*Id.* at p. 452-453.) The Court stated, "We now hold that the forgery of any fictitious instrument mentioned in section 470, and

not mentioned or included in section 476, falls within the former section.” (*Id.* at p. 453.)

Defendant asserts that the *Chretien* Court held that “a deed transferring property was the same as a bill, note, or check, and thus the defendant was properly convicted of forgery.” This misstates the holding of the case. Moreover, the Court’s interpretation of the statutes in *Chretien* supports the courts’ holdings in *Martinez* and *Bloomfield*, as well as our conclusion here, that section 473(b), a narrowly written statute involving specific instruments, does not encompass a broader class of instruments not included in the statute.

Defendant also argues in his reply brief that this case is similar to *People v. Mutter* (2016) 1 Cal.App.5th 429, in which the defendant pled guilty to possession of a counterfeit item under section 475, subdivision (a). (*Id.* at p. 432.) The defendant later sought resentencing under Proposition 47, asserting that the counterfeit currency he possessed met the definition of a “bank bill” under section 473(b). The court noted that other statutes and cases equated “bank bill” with paper currency. (*Id.* at p. 435.) The court concluded that “bank bill” referred to currency, and therefore the counterfeit currency in the defendant’s possession fell within the scope of section 473(b). (*Id.* at p. 436)

Defendant asserts that in *Mutter*, the court found that “the items were similar in character to the section 473 enumerated items.” The court made no findings about the “character” of the counterfeit currency. Instead, the court considered only whether counterfeit currency met the definition of “bank bill” in section 473(b). This holding is not applicable here, where defendant has made no effort to assert that a residential purchase agreement, a buyer inspection advisory, or a grant deed could fall within the

definitions of the seven instruments enumerated in section 473(b).

In his opening brief, defendant did not address the trial court's finding that section 473(b) does not apply to his convictions. Instead, he devoted his opening brief to the argument that the trial court erred by finding that the amount of the losses at issue in the underlying convictions barred resentencing under Proposition 47. Because the forged documents at issue do not fall within section 473(b), however, the dollar amounts involved are irrelevant.

DISPOSITION

The judgment is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.