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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CRUZ ALFREDO AGUILAR, Defendant and Appellant.	B271453 (Los Angeles County Super. Ct. No. PA066689)

APPEAL from an order of the Superior Court of Los Angeles County. Monica Bachner, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Timothy L. O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

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Cruz Alfredo Aguilar (defendant) appeals the trial court's denial of his application, filed pursuant to Proposition 47 (Pen. Code, § 1170.18),[1] to redesignate his 2010 felony conviction for receipt of stolen property (§ 496, subd. (a)) as a misdemeanor. We conclude there was no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

In April 2010, defendant pled no contest to one count of receiving stolen property (§ 496, subd. (a)) and three counts of identity theft (§ 530.5, subd. (a)); he also admitted that he had served one prior prison term (§ 667.5, subd. (b)).[2] The trial court sentenced him to a three-year prison sentence, comprised of two years as the base term for one of the identity theft counts plus one year for the prior prison term. The court imposed concurrent two-year sentences on the remaining identity theft and receipt of stolen property counts.

In May 2014, defendant pled no contest to one count of attempted murder (§§ 187, subd. (a) & 664) and one count of first degree ATM robbery (§ 211); he also admitted that he committed these crimes for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). Defendant was sentenced to prison for 20 years and four months, comprised of nine years for the attempted murder plus 10 years for the gang enhancement plus a consecutive 16-month term for the ATM robbery.

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

2 The People charged three other counts of identity theft and two other prior prison terms, but those were dismissed as part of defendant's plea bargain.

In August 2015, defendant filed an application pursuant to Proposition 47 seeking to redesignate his 2010 felony conviction for receiving stolen property as a misdemeanor. He filed a supplemental application in January 2016. Following two rounds of briefing, the trial court denied his application on the ground that defendant's 2014 conviction for attempted murder rendered him ineligible for Proposition 47 relief.

Defendant timely appealed this ruling.

DISCUSSION

The Safe Neighborhoods and Schools Act, enacted by the voters in 2014 as Proposition 47, redesignates as misdemeanors "certain drug- and theft-related offenses" that were charged as felonies or charged as "wobblers" (that is, offenses that are punishable as a felony until a court reduces them to a misdemeanor) and ultimately sentenced as felonies. (§ 1170.18; *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Proposition 47 not only prospectively redesignates the offenses it covers, but also empowers a defendant *previously* convicted of such offenses to file an application "to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subds. (f) & (g).) Critically, "[t]he provisions [of Proposition 47] shall not apply to persons who have one or more *prior convictions* for an offense specified in" section 667, subdivision (e)(2)(C)—so-called "super strike" offenses[3]—or "for an offense requiring registration" as a sex offender. (§ 1170.18, subd. (i), italics added.)

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3 Those offenses include (1) a "sexually violent offense" (as defined in Welf. & Inst. Code, § 6600), (2) sodomy, oral copulation, or sexual penetration with a child under the age of 14 when the defendant is age 24 or older (in violation of §§ 286, 288a, or 289), (3) a lewd or lascivious act involving a child under

The trial court determined that defendant was not eligible for relief under Proposition 47 due to his 2014 conviction for attempted murder, which is a super strike offense. (See § 667, subd. (e)(2)(C)(iv)(IV) [covering "[a]ny homicide offense"].) Defendant challenges this ruling, asserting that Proposition 47's bar to relief for persons with a "*prior* [super strike] conviction" only applies if that conviction was incurred *prior to the commission of the offense the defendant seeks to redesignate*. This is a question of statutory interpretation that we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

Defendant's argument has been rejected by every court to have considered it. (See *People v. Zamarripa* (2016) 247 Cal.App.4th 1179, 1182-1184 (*Zamarripa*); *People v. Montgomery* (2016) 247 Cal.App.4th 1385, 1387, 1391-1392 (*Montgomery*); *People v. Walker* (2016) 5 Cal.App.5th 872, 875-879 (*Walker*).)

Every one of these decisions held that Proposition 47's bar to relief applies if the "prior [super strike] conviction" was suffered *prior to the defendant's Proposition 47 application*, even if it was suffered *after* the defendant committed the offense to be redesignated. (*Zamarripa*, *supra*, 247 Cal.App.4th at pp. 1182-1184; *Montgomery*, *supra*, 247 Cal.App.4th at p. 1387; *Walker*, *supra*, 5 Cal.App.5th at pp. 875-879.) These courts reasoned that the statutory language erecting the bar was ambiguous: As the

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the age of 14 (in violation of § 288), (4) homicides and attempted homicides (in violation of §§ 187-191.5), (5) soliciting murder (in violation of § 653f), (6) assault with a machine gun on a peace officer or firefighter (in violation of § 245, subd. (d)(3)), (7) possessing a weapon of mass destruction (in violation of § 11418, subd. (a)(1)), and (8) any other serious or violent felony punishable by life imprisonment or death. (§ 667, subd. (e)(2)(C)(iv).)

court in *Montgomery* put it, the statute may refer to "prior convictions," but that begs the question: "'Prior to what?'" (*Montgomery*, at p. 1387.) In interpreting Proposition 47 to deny relief whenever a super strike conviction is suffered prior to the filing of a Proposition 47 application rather than prior to the date of the offense the defendant seeks to redesignate, these courts relied on several considerations: (1) "[n]othing in [the subdivision dealing with the super strike bar] limits its application to time periods prior to the commission of the offense for which reclassification is sought"; (2) allowing defendants who had suffered super strike convictions in the window between the offense to be redesignated and the filing of their Proposition 47 applications to remain eligible for Proposition 47 relief would (a) fly in the face of the intent behind Proposition 47—namely, to "'[e]nsure that people convicted of murder, rape, and child molestation will not benefit from this act'" and "'to ensure that prison spending is focused on violent and serious offenses,'" and (b) contradict the Legislative Analyst's contemporaneous view that "'no offender who has committed a specified severe crime[, including murder,] could be resentenced or have their conviction changed.'" (*Zamarripa*, at pp. 1182-1184, quoting Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 2 & 3, p. 70; *Walker*, at pp. 876-877, quoting Voter Information Guide, Gen. Elec., *supra*, analysis of Prop. 47 by Legis. Analyst, p. 36; *Montgomery*, at pp. 1387, 1391.)

We are persuaded by the analysis in *Zamarripa*, *Montgomery*, and *Walker*, and agree that Proposition 47's bar to relief applies to super strike convictions suffered after commission of the offense to be redesignated.

Defendant offers three reasons why we should split with these cases. First, he asserts that the language in section 1170.18, subdivision (i) is "clear and unambiguous." We disagree for the reasons so succinctly stated in *Montgomery*: Subdivision (i) may say "prior conviction," but leaves unanswered the next logical question, "Prior to what?"

Second, defendant contends that the term "prior conviction" has been interpreted in other contexts to mean a conviction suffered prior to the offense for which the defendant is being sentenced. Specifically, he cites cases coming to this conclusion in the context of capital sentencing (*People v. Thomas* (2012) 53 Cal.4th 771, 820 [interpreting § 190.3]), sentencing under our Three Strikes law (*People v. Flood* (2003) 108 Cal.App.4th 504, 507), and resentencing under the Three Strikes Reform Act of 2012 (*People v. Spiller* (2016) 2 Cal.App.5th 1014, 1019). How the phrase "prior conviction" is construed when it is part of an entirely different statutory scheme is of little utility because, when it comes to statutory interpretation, context matters. (E.g., *John v. Superior Court* (2016) 63 Cal.4th 91, 96 ["[w]e construe the statute's words *in context*," italics added].) Indeed, the *Spiller* decision defendant cites explicitly notes that the meaning of "prior conviction" in Proposition 47 may differ from its construction of the same term under the Three Strikes Reform Act for this very reason. (*Spiller*, at p. 1026, fn. 3.) And it does: With Proposition 47—but not in any of the other contexts (capital sentencing, Three Strikes sentencing, or Three Strikes Reform Act resentencing)—there is an articulated intent not to extend relief to persons who have committed super strike offenses. Were we to ignore that intent in favor of borrowing the definition of "prior conviction" from other statutory schemes, we would ignore

our primary directive of ascertaining and giving effect to the voters' intent. (*People v. Park* (2013) 56 Cal.4th 782, 796 ["[o]nce the electorate's intent has been ascertained, the provisions must be construed to conform to that intent"].)

Lastly, defendant argues that interpreting Proposition 47's bar to relief to apply to any super strike conviction suffered prior to the *filing* of a defendant's Proposition 47 application—but not to apply if the conviction is suffered prior to the trial court's *ruling* on that application—is an absurd result. We certainly should avoid construing statutes to lead to absurd results. (*People v. Cook* (2015) 60 Cal.4th 922, 927.) But we need not confront the "absurdity" defendant presents because it is not presented in this case. Whether the "cutoff" date for consideration of super strike convictions is the date a defendant files his Proposition 47 application or the date a court rules on it does not matter in this case because defendant suffered his attempted murder conviction in 2014, long before he applied for Proposition 47 relief.

DISPOSITION

The order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ