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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DANIEL GARCIA,

Defendant and Appellant.

B270278

(Los Angeles County
Super. Ct. No. KA078290)

APPEAL from an order of the Superior Court of Los Angeles County, Wade Olson, Commissioner. Affirmed in part and reversed in part.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys 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.

Defendant Anthony Daniel Garcia appeals from an order denying his petition for resentencing under the Safe Neighborhoods and Schools Act of 2014, which was enacted by the voters as Proposition 47 and reduces the penalty for some theft-related offenses from felonies to misdemeanors when the value of the stolen property does not exceed \$950. (Pen. Code, §§ 490.2, 1170.18.) Garcia's petition sought to reduce to a misdemeanor his felony conviction for obstructing or resisting an executive officer in violation of Penal Code section 69 (section 69). Garcia did not seek the reduction to misdemeanors of any of the three other felony convictions he suffered, one of which was for the unlawful taking or driving of a vehicle in violation of Vehicle Code section 10851 (section 10851). Nevertheless, in its order, the trial court referred to all four of Garcia's felony convictions, not just the section 69 conviction that was subject of Garcia's petition, and stated that none of the convictions was eligible for reduction to a misdemeanor under Proposition 47.

On appeal, Garcia has abandoned the Proposition 47 relief that he sought below and that the trial court denied: the reduction of his section 69 conviction. Instead, Garcia seeks Proposition 47 relief that he did not seek below but that the trial court denied anyway: the reduction of his section 10851 conviction.

We affirm the denial of Proposition 47 relief on Garcia's section 69 conviction because Garcia abandoned that claim on appeal. We reverse the denial of Proposition 47 relief on Garcia's section 10851 conviction because Garcia's petition did not present that claim to the trial court. Garcia thus may file a new Proposition 47 petition seeking the reduction of his section 10851 conviction to a misdemeanor. We do not address whether

section 10851 convictions are eligible for reduction under Proposition 47 because Garcia raised that question for the first time on appeal.¹

DISPOSITION

The trial court's denial of Garcia's Proposition 47 petition for the reduction of his section 69 felony conviction to a misdemeanor is affirmed. The trial court's denial of the reduction to a misdemeanor under Proposition 47 of Garcia's section 10851 felony conviction is reversed.

SMALL, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

¹ That question is currently pending before the California Supreme Court in a series of cases. (*People v. Page* (2015) 241 Cal.App.4th 714, review granted Jan. 27, 2016, S230793 (lead case); see also *People v. Saucedo* (2016) 3 Cal.App.5th 635, review granted Nov. 30, 2016, S237975; *People v. Johnston* (2016) 247 Cal.App.4th 252, review granted July 13, 2016, S235041; *People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150.) Briefing is completed in the lead case.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.