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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.

GERJUAN HARMON,

Defendant and Appellant.

B279924

(Los Angeles County
Super. Ct. No. LA071371)

THE COURT:*

Gerjuan Harmon (defendant) appeals from the trial court's denial of his petition for resentencing under Proposition 57 (Cal. Const., art. I, § 32), a voter-enacted initiative on the November 2016 ballot.

Defendant stands convicted of the following offenses:
(1) first degree burglary with another person present (Pen. Code,

*ASHMANN-GERST, Acting P. J., CHAVEZ, J., HOFFSTADT, J.

§§ 459 & 460)¹; (2) grand theft of personal property (§ 487, subd. (a)); (3) unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)); (4) evading an officer in a vehicle with willful disregard (Veh. Code, § 2800.2, subd. (a)); (5) resisting executive officers (§ 69); and (6) hit and run driving, as a misdemeanor (Veh. Code, § 20002, subd. (a)). The jury also found true various enhancement allegations, including that defendant's 2010 first degree burglary conviction constituted a strike under our Three Strikes law (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)), a prior serious felony (§ 667, subd. (a)(1)), and a prior prison term (§ 667.5, subd. (b)), and that defendant had suffered four additional prior prison terms (§ 667.5, subd. (b)).

The trial court sentenced defendant to 17 years in state prison. This sentence was comprised of eight years for the principal offense of first degree burglary (a four-year middle term doubled for the prior strike) plus three consecutive terms of 16 months (one-third the middle term doubled for the prior strike), one for each of defendant's convictions for the unlawful taking of a vehicle, evading an officer, and the first resisting an executive officer count. The court added a consecutive five-year term because the 2010 first degree burglary was a serious felony, and imposed concurrent prison terms of four years on the second resisting an executive officer count, and six months on the hit and run misdemeanor. The court stayed sentences for grand theft and for all five prior prison terms.

In March 2016, we affirmed defendant's convictions and ordered his sentence modified by striking (rather than staying)

¹ Unless otherwise indicated, all further statutory references at to the Penal Code.

the five prior prison term sentences as required by law.

(See *People v. Harmon* (Mar. 3, 2016, B259263) [nonpub. opn.])

In late November 2016, defendant petitioned the trial court for resentencing pursuant to the recently enacted Proposition 57. The court denied defendant's motion, noting that Proposition 57 does not authorize courts to resentence defendants. Defendant appeals the court's ruling.

Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues. After we notified defendant of his counsel's brief and gave him leave to file his own brief or letter stating any grounds or argument he might wish to have considered, defendant submitted a supplemental brief in which he argues that the trial court erred in concluding that he was not eligible for relief under Proposition 57. We have reviewed the entire record, and finding no arguable issues, affirm the judgment.

As pertinent to this appeal, Proposition 57 amended the California Constitution to achieve two ends. First, the Constitution now requires that "[a]ny person convicted of a *nonviolent* felony offense and sentenced to state prison . . . be eligible for parole consideration after completing the full term for his or her primary offense." (Cal. Const., art. I, § 32, subd. (a)(1), *italics added*.) For these purposes, a "full term for the primary offense means the longest term of imprisonment imposed . . . for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (*Id.*, subd. (a)(1)(A).) Second, the Constitution now requires the "Department of Corrections and Rehabilitation . . . to award credits earned for good behavior and approved rehabilitative or educational achievements." (*Id.*, subd. (a)(2).)

Defendant argues on appeal that he is entitled to immediate release because the “full term for his . . . primary offense” is four years (once the Three Strikes law enhancement is ignored), and he has already served four years. Defendant is wrong. Proposition 57 applies to a “person convicted of a *nonviolent* felony offense.” However, because defendant’s conviction for first degree burglary with another person present is a “violent” offense under California law (§ 667.5, subd. (c)(21)), he is not a “person convicted of a nonviolent felony offense.” Defendant resists this conclusion, arguing that the term “violent felony” is unconstitutionally vague under *Johnson v. United States* (2015) 576 U.S. ____ [135 S.Ct. 2551, 192 L.Ed.2d 569].) But *Johnson* dealt with whether a residual clause gave sufficient notice of which offenses were “violent” crimes. (*Id.* at pp. 2554-2555.) Here, the specific crime of which defendant stands convicted is specifically listed as a “violent” felony. Moreover, to the extent defendant seeks a new sentencing hearing at which a court is obligated to strike every enhancement and sentence other than the “full term” sentence, that relief is unavailable under Proposition 57. Proposition 57 creates a mechanism for parole consideration—not a vehicle for resentencing.

Defendant also seems to suggest that Proposition 57 is unconstitutional because it authorizes the Department of Corrections and Rehabilitation to award or remove custody credits—and to adjudicate the basis for doing so—because, in his view, it is the role of the courts to handle such litigation. Defendant is incorrect. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 31.)

The judgment is affirmed.

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