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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

THE PEOPLE, Plaintiff and Respondent, v. EARL ROY JACKSON, Defendant and Appellant.	B269484 (Los Angeles County Super. Ct. No. A766720)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Affirmed.

Erick V. Munoz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Defendant and appellant Earl Roy Jackson filed a petition to have his felony conviction designated as a misdemeanor pursuant to Proposition 47, the Safe Neighborhoods and Schools Act of 2014. (Pen. Code, § 1170.18[1].) In his petition, defendant stated he was convicted of robbery (§ 211) in 1985.[2] The trial court denied the petition on the ground that robbery is not an offense that is eligible for Proposition 47 relief. Defendant appealed, and we appointed counsel to represent him.

Defendant's appointed counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436, requesting this court to conduct an independent review of the record to determine if there are any arguable issues. On August 11, 2016, we gave notice to defendant that counsel had failed to find any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. On September 16, 2016, we granted defendant permission to file an opening brief in which he contends his robbery conviction should be designated a misdemeanor conviction under section 1170.18, because section 1170.18 should be construed broadly and because defendant was sentenced to one year in county jail and three years of probation

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1 All statutory citations are to the Penal Code unless otherwise noted.

2 The record on appeal does not disclose whether defendant was convicted of first or second degree robbery. Because the degree of defendant's robbery is immaterial to our analysis, we will accept defendant's contention that his conviction was for second degree robbery.

(i.e., that his robbery conviction was a "wobbler" for which he received a misdemeanor and not a felony conviction).[3]

DISCUSSION

Section 1170.18, subdivision (a) lists the specific drug and theft offenses Proposition 47 subjected to potential reduction from felonies to misdemeanors, namely: "Sections 11350, 11357,[4] or 11377 of the Health and Safety Code, or Section 459.5 [shoplifting], 473 [forgery], 476a [insufficient funds check, draft, or order], 490.2 [petty theft], 496 [receiving stolen property], or 666 [petty theft with a prior theft-related conviction] of the Penal Code." Section 1170.18, subdivision (f) provides that "[a] person who has completed his or her sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application . . . to have the felony conviction or convictions designated as misdemeanors." Notably, section 1170.18 does not include robbery (§ 211) as one of the offenses subject to Proposition 47. Thus, Proposition 47 left the offense of robbery a felony not subject to reduction, and defendant is not eligible for relief under section 1170.18.

In his opening brief, defendant contends that Proposition 47 did not provide an exhaustive list of statutes that were to be affected by its passing, because "the purpose of the proposition

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3 Apart from defendant's assertion in his petition, the record on appeal does show that defendant was placed on probation and served one year in county jail for his robbery conviction.

4 Health and Safety Code section 11357 was amended on November 8, 2016, by Proposition 64, section 8.1.

was to reduce prison spending for certain offenses, incluiding [*sic*] nonserious thefts." The statutory language of section 1170.18, however, is clear and unambiguous that its relief applies only to the specifically enumerated offenses. Nothing in the language of section 1170.18 suggests that it should be extended further, and this court will not inquire into the purpose of Proposition 47 to extend section 1170.18 relief beyond its plain meaning. (*Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 620-622.)

Defendant also contends that his conviction should be designated a misdemeanor because he received a sentence of one year in county jail and three years of probation, which, according to defendant, shows that his robbery conviction was a "wobbler" that the sentencing court intended to treat as a misdemeanor. A "wobbler" is a crime that is "punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail." (§ 17, subd. (b).) "Robbery of the second degree is punishable by imprisonment in the state prison for two, three, or five years." (§ 213, subd. (a)(1)(B)(2).) Because a trial court does not have the discretion to punish the commission of second degree robbery as a misdemeanor and not as a felony, second degree robbery is not a wobbler. Moreover, that defendant served one year in county jail as a condition of his probation did not convert his felony conviction into a misdemeanor under section 17. (*People v. Livingston* (1970) 4 Cal.App.3d 251, 254-255.)

We have otherwise reviewed the record and are satisfied that defendant's counsel has fully complied with his responsibilities and no arguable issues exist. (*People v. Wende, supra,* 25 Cal.3d at p. 441.) Accordingly, we affirm the order.

DISPOSITION

The order denying defendant's petition for resentencing pursuant to Proposition 47 is affirmed.

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KIN, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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