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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.

JUSTIN DEAN DeFRANCO,

Defendant and Appellant.

B262612

(Los Angeles County
Super. Ct. No. NA093858)

THE COURT: *

Defendant Justin Dean DeFranco appeals from the denial of his petition for resentencing pursuant to Proposition 47. Defendant pleaded guilty on January 11, 2013, to three counts of counterfeiting a seal (Pen. Code, § 472)¹ (counts 1, 5, 6); three counts of forgery (§ 475, subds. (b), (c)) (counts 2, 3, 4); and two counts of theft of access card account information (§ 484e, subd. (d)) (counts 7, 8). Defendant admitted to having suffered five prior prison terms within the meaning of section 667.5, subdivision (b).

The trial court sentenced defendant to a total of eight years in state prison. In count 1, the court imposed the upper term of three years and an additional three years

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BOREN, P.J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

pursuant to section 667.5, subdivision (b). The court imposed one-third the midterm (eight months) in counts 2, 3, 5, and 6. Sentence was stayed under section 654 in the remaining counts. The court suspended execution of sentence and placed defendant on three years of formal probation.

On May 14, 2013, defendant failed to appear in court for a progress report, and his probation was revoked. On December 4, 2013, defendant waived his rights to a hearing and admitted the violation of probation. The trial court found defendant in violation, revoked probation, and sentenced him to serve eight years.

Defendant filed a petition for resentencing on December 22, 2014. The court denied the motion because counts 1, 5, and 6 (making a counterfeit seal) were not eligible offenses under Proposition 47. With respect to counts 2, 3, and 4 (forgery), defendant was ineligible for resentencing because he had suffered three or more prior convictions for violations of sections 470, 475, or 476. (§ 476a, subd. (b).)

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that she had been unable to find any arguable issues. On July 10, 2015, we advised defendant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

“Proposition 47 makes certain drug- and theft-related 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). Proposition 47 (1) added chapter 33 to the Government Code (§ 7599 et seq.), (2) added sections 459.5, 490.2, and 1170.18 to the Penal Code, and (3) amended Penal Code sections 473, 476a, 496, and 666 and Health and Safety Code sections 11350, 11357, and 11377. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 4-14, pp. 70-74.)” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Defendant’s conviction for counterfeiting a seal under section 472 is not within the scope of Proposition 47.

Although convictions under section 476a are eligible, in defendant's case they are not. The record shows defendant suffered a prior conviction for violating section 470, subdivision (d); two prior convictions for violating section 475; and a prior conviction for violating section 476. This renders defendant's current convictions ineligible under section 476a, subdivision (b). At the hearing on the petition for resentencing, the defense submitted on these prior-conviction allegations and chose not to contest them at an evidentiary hearing.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with her responsibilities, and no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order under review is affirmed.

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