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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRED DOUGLAS SMITH III,

Defendant and Appellant.

B286346

(Los Angeles County
Super. Ct. No. BA425488)

APPEAL from an order of the Superior Court of
Los Angeles County, Henry J. Hall, Judge. Affirmed.

Emily Lowther Brough, under appointment by the
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Fred Smith appeals from an order denying his petition for resentencing. Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, identifying no issues and requesting that this court review the record and determine whether any arguable issue exists on appeal. Defendant filed a supplemental letter brief upon notice from this court of the opportunity to do so.¹ We have reviewed the record, conclude the record reveals no arguable issue on appeal, and thus affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Evidence presented at the preliminary hearing showed that on May 27, 2014, defendant took a drill from a Home Depot store and left the store without paying for it. When approached by a store employee, defendant "pulled a knife from his pocket." Defendant, who was in a wheelchair, appeared to "lunge[]" toward the employee with the knife. Defendant cut the finger of a second employee who tried to assist the first.

In an amended information, defendant was charged with one count of robbery and two counts of assault with a deadly weapon. It was alleged that he suffered two prior robbery convictions. Five prior convictions within the meaning of Penal Code² section 667.5 were alleged.

Defendant pled no contest to one count of robbery. Defendant admitted one prior conviction. The trial court sentenced defendant to an aggregate term of 11 years.

¹ We sent a letter notice to defendant on March 21, 2018. Defendant filed his supplemental letter brief on May 24, 2018.

² Undesignated statutory citations are to the Penal Code.

Defendant filed numerous petitions to amend his sentence, only one of which is the subject of the current appeal. On October 10, 2017, defendant filed what the trial court denominated as a “second” petition requesting resentencing under section 1170.18, part of Proposition 47, enacted in November 2014. Defendant argued that he should have been convicted of shoplifting instead of robbery. The trial court denied defendant’s petition on October 20, 2017. Defendant appealed from that ruling on November 6, 2017.

DISCUSSION

In his supplemental letter brief, defendant states that although he was convicted of robbery, “the truth of the matter” was that he was shoplifting. Defendant disputed the evidence presented at the preliminary hearing concerning his use of a knife. Further, citing Proposition 57, defendant argued that his robbery conviction should be considered a nonviolent offense. Defendant’s arguments lack merit.

The trial court properly denied defendant’s petition to amend his sentence pursuant to section 1170.18 because that statute does not apply to a robbery conviction. Under section 1170.18, subdivision (f): “A person who has completed his or her sentence for a conviction, whether by trial or plea, 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 before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” This statute does not include robbery (§ 211) and thus does not authorize the relief defendant requests. (§ 1170.18, subd. (a).)

Although defendant argues that he committed only petty theft, he pled no contest to robbery and was convicted of robbery.

On appeal but not below, defendant cites Proposition 57. Defendant forfeited his contention based on Proposition 57 because he did not refer to it in the trial court. In any event, the trial court would have lacked authority to consider a resentencing request under Proposition 57. Proposition 57, effective November 8, 2016, amended article I, section 32 of the California Constitution governing the consideration of parole and the earning of behavior credits in state prison. It also eliminated the People's ability to file charges against a juvenile defendant directly in adult court. Proposition 57 "did not create or authorize 'a substantive right to be resentenced' or provide 'a remedy by way of a statutory postjudgment motion' for an inmate to file a petition with the superior court for recall or resentencing in the first instance." (*People v. Dynes* (2018) 20 Cal.App.5th 523, 528.)

We have examined the entire record and are satisfied that defendant's appellate attorney has complied with her responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at pp. 438-441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The order denying defendant's petition for resentencing is affirmed.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.