Filed 4/14/17 P. v. Johnson Ca2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>TEEWAY JOHNSON,<br><br>Defendant and Appellant. | B276576<br><br>(Los Angeles County Super. Ct. No. A748006) |

APPEAL from an order of the Superior Court of Los Angeles County. Christopher G. Estes, Judge. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal; and Teeway Johnson, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2016 Teeway Lamar Johnson filed a petition to reclassify his 1988 felony conviction for attempted first degree burglary (Pen. Code, §§ 459, 664) as a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18). The trial court denied the petition, ruling Johnson's conviction for attempted first degree burglary was "outside the scope of relief pursuant to Proposition 47." Johnson filed a timely notice of appeal. We affirm.

## DISCUSSION

We appointed counsel to represent Johnson on appeal. After an examination of the record, counsel filed an opening brief raising no issues. On November 30, 2016 we advised Johnson he had 30 days to file a supplemental brief raising any contentions or issues he wanted us to consider.

After granting Johnson an extension, we received a supplemental brief from Johnson stating that, when the court sentenced him in November 2008 on a conviction for possession of cocaine base for sale in violation of Health and Safety Code section 11351.5, the court used the 1988 conviction for attempted first degree burglary as a strike. Johnson sought relief under Proposition 47 on the theory that, if the court reduced the 1988 felony conviction to a misdemeanor, Johnson would no longer be a second strike offender under the three strikes law. Johnson argued in his supplemental brief that under *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435] (*Apprendi*) he was entitled to a jury trial on the issue whether his

"prior conviction qualified as a strike" and precluded relief under Proposition 47.

The trial court correctly ruled that Johnson is not entitled to resentencing on his 1988 conviction for attempted first degree burglary because that offense is not one of the eligible offenses under Proposition 47. (See Pen. Code, § 1170.18, subd. (a).) And even if it were, a petitioner does not have a right to a jury trial under *Apprendi* on his or her eligibility for resentencing under Proposition 47. (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 451; see *People v. Scott* (2015) 61 Cal.4th 363, 405.)

We have examined the record and are satisfied appellate counsel for Johnson has fully complied with his responsibilities and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct.746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) The trial court correctly ruled that Johnson is not entitled to resentencing under Penal Code section 1170.18.

**DISPOSITION**

The order is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. SMALL, J.*

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