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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DANIEL ELLIOTT,

Defendant and Appellant.

2d Crim. No. B283212
(Super. Ct. No. 14C-03174)
(San Luis Obispo County)

James Daniel Elliott appeals an order denying a petition to recall sentence and resentence his 2014 felony conviction pursuant to Proposition 47, the Safe Neighborhoods and Schools Act. (Pen. Code, § 1170.18, subd. (a).)¹ We affirm. (*People v. Buycks* (2018) 5 Cal.5th 857, 876 (*Valenzuela*).)

FACTUAL AND PROCEDURAL HISTORY

On July 30, 2014, Elliott pleaded nolo contendere to assault by means of force likely to produce great bodily injury. (§ 245,

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

subd. (a)(4).) He also admitted serving three prior prison terms within the meaning of section 667.5, subdivision (b), and committing the assault while released on bail for earlier charges pursuant to section 12022.1. On August 27, 2014, the trial court sentenced Elliott to a nine-year prison term, consisting of four years for the assault count, three years for the three prior prison terms, and two years for the on-bail enhancement. The court also imposed a \$5,400 restitution fine, a \$5,400 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$30 criminal conviction assessment, and awarded Elliott 388 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.) Elliott did not appeal the judgment.

Two years later, Elliott petitioned the trial court to reduce the felony convictions underlying two of the prior prison term findings to misdemeanors, i.e., 2004 and 2012 convictions for possession of methamphetamine. (§ 1170.18, subd. (f); Health & Saf. Code, § 11377, subd. (a).) The court granted the petition. Elliott then petitioned for recall of sentence and resentencing in the present case to strike two of the three prior prison term enhancements because their underlying felony convictions for drug possession had been reclassified as misdemeanors.

On April 24, 2017, after consideration of the parties' written arguments, the trial court denied Elliott's motion. Elliott appeals and contends that the trial court erred by denying his resentencing petition.

During the pendency of this appeal, our Supreme Court decided *Valenzuela*. That decision generally held that prior felony convictions, now reclassified as misdemeanors, cannot support a prior prison term enhancement pursuant to section

667.5, subdivision (b). For that reason, we requested the parties to file letter briefs discussing the application of *Valenzuela*. The parties now agree that *Valenzuela* applies only to those cases in which a defendant's judgment was not final as of the November 5, 2014, effective date of Proposition 47, and that Elliott's judgment was final by that date. (*Valenzuela, supra*, 5 Cal.5th 857, 879.)

DISCUSSION

Our Supreme Court concluded in *Valenzuela* that Proposition 47 authorized striking a prior prison term enhancement if the underlying felony conviction attached to the enhancement has been reclassified as a misdemeanor. (*Valenzuela, supra*, 5 Cal.5th 857, 888.) This retroactive striking applies only to those judgments that were not final at the time Proposition 47 became effective. (*Id.* at p. 876.)

Here Elliott pleaded nolo contendere on July 30, 2014, and was sentenced on August 27, 2014. He did not appeal and thus his conviction was final prior to November 5, 2014. *Valenzuela* does not apply and the trial court properly denied Elliott's petition. (*Valenzuela, supra*, 5 Cal.5th 857, 876.)

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Hugh F. Mullin, Judge

Superior Court County of San Luis Obispo

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