Filed 11/17/17 P. v. Tribble CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. KEITH BRYANT TRIBBLE, Defendant and Appellant.	B282622 (Los Angeles County Super. Ct. No. YA043915)

APPEAL from an order of the Superior Court of Los Angeles County. Mark S. Arnold, Judge. Affirmed.

Keith Bryant Tribble, in pro. per.; Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In October 2000, appellant Keith Bryant Tribble was charged with two carjackings (Pen. Code, § 215, subd. (a)), one occurring April 10, 2000 and one occurring April 14, 2000.[1] He also was charged with kidnapping (§ 207, subd. (a)) and second degree robbery (§ 211) in connection with the April 10 carjacking, and assault with a deadly weapon (§§ 245, subd. (a)(1), 1192.7, subd. (c)) in connection with the April 14 carjacking. It was further alleged that appellant personally used a handgun within the meaning of sections 12022.5, subdivision (a)(1) and 12022.53, subdivision (b), in connection with the April 10 crimes, and that appellant had suffered two prior serious or violent felony convictions or juvenile adjudications for purposes of the "Three Strikes" law. (§ 667, subd. (b)-(i) & § 1170.12, subd. (a)-(d).) The two strikes were identified in the information as a conviction for "[r]esidential [b]urglary" on April 26, 1984 in Cook County, Illinois and a conviction for "[r]obbery" on February 27, 1987 in Milwaukee County, Wisconsin.

Appellant pled no contest to the two counts of carjacking, admitted personal use of a firearm within the meaning of section 12022.53, subdivision (b), and admitted one prior felony conviction within the meaning of the Three Strikes law. He was sentenced to prison for a total of 33 years. The plea and sentence were affirmed by this court in *People v. Tribble* (Feb. 6, 2004, B168412) 2004 Cal.App.Unpub. LEXIS 1201.

---

[1] Undesignated statutory references are to the Penal Code.

On March 29, 2017, appellant filed a petition to reduce a charge to a misdemeanor pursuant to Proposition 47. The clerk could not locate a copy of the petition, so it is not clear from the record which specific charge or charges he raised in the petition. The trial court denied the petition, stating in its minute order: "[Appellant] was convicted of Penal Code section 215(a). This is not a charge that is covered under Proposition 47."

Appellant filed a notice of appeal challenging the denial of his petition to reduce his "prior 2nd degree burglary to a misdemeanor." After reviewing the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436. On August 4, 2017, we sent a letter to appellant's last known address, advising him that he had 30 days within which to submit by brief or letter any contentions or argument he wished this court to consider. Appellant filed a letter brief contending his burglary prior should have been reduced to a misdemeanor.

This court has examined the entire record, and is satisfied no arguable issues exist. Proposition 47 "makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) It added a new provision to the Penal Code: section 1170.18. Subdivision (a) of section 1170.18 permits "[a] person [currently] serving a sentence for a conviction . . . of a

felony or felonies who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense" to "petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing. . . ." Subdivision (f) of section 1170.18 permits "[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" to "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."

To the extent appellant sought recall of his sentence for the crimes to which he pled no contest in 2000, he is ineligible, as carjacking is not one of the offenses within the scope of Proposition 47. (See *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308 ["[Proposition 47] added sections 459.5 [shoplifting], 490.2 [petty theft] and 1170.18 to the Penal Code; amended sections 473 [forgery related to checks, bonds, bank bills, notes, etc.], 476a [insufficient fund checks, drafts or bank orders], 496 [receipt of stolen property] and 666 [petty theft with a prior] of the Penal Code; and amended Health and Safety Code sections 11350 [possession of designated controlled substances], 11357 [possession on school grounds] and 11377 [unauthorized possession of controlled substance"]; *People v. Acosta* (2015) 242 Cal.App.4th 521, 526 [crime not mentioned in list of offenses

reduced to misdemeanors is not within purview of Proposition 47].)

To the extent appellant sought redesignation of either or both of his out-of-state priors, Proposition 47 does not apply to either residential burglary or robbery. (See *People v. Shabazz*, *supra*, 237 Cal.App.4th at p. 308; *People v. Acosta*, *supra*, 242 Cal.App.4th at p. 526.) Moreover, section 1170.18, subdivision (f) requires the defendant to "file an application before the trial court that entered the judgment of conviction in his or her case . . . . " This language requires a defendant to file an application for redesignation of a felony in the court of conviction of that felony. (*People v. Diaz* (2015) 238 Cal.App.4th 1323, 1331-1335.) Appellant's prior convictions were entered in Illinois and Wisconsin. Proposition 47 does not permit a California court to redesignate them.

Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the order denying his petition. (*Smith v. Robbins* (2000) 528 U.S. 259, 278.)

DISPOSITION

The order denying appellant's petition is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.