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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.

JOSE LUIS RUIZ,

Defendant and Appellant.

2d Crim. No. B275150
(Super. Ct. No. 2015035713)
(Ventura County)

A defendant is convicted of two felony counts. Before sentencing, he successfully petitions to redesignate prior felony convictions as misdemeanors. Here we hold that the prior convictions cannot be used to enhance his current sentence under Penal Code section 667.5.¹

FACTUAL AND PROCEDURAL BACKGROUND

A jury convicted Jose Luis Ruiz of assault with a deadly weapon (§ 245, subd. (a)(1)) and attempted second degree

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

robbery (§§ 664, 211). In both counts, Ruiz was charged with two prior prison term enhancements pursuant to section 667.5, subdivision (b). Both prior convictions were for possession of controlled substances (Health & Saf. Code, § 11350, subd. (a)).

After the jury returned guilty verdicts in this case, Ruiz appeared for a court trial on the prior prison term enhancements. At that time he filed a petition to reduce both prior convictions to misdemeanors pursuant to section 1170.18, subdivision (f). The petition was granted.

After the petition was granted, the trial court sentenced Ruiz to the midterm of three years for assault with a deadly weapon and imposed 2 one-year enhancements pursuant to section 667.5, subdivision (b), for a total term of five years in state prison. The court imposed and stayed the midterm of three years for attempted second degree robbery and two additional one-year enhancements based on the prior convictions.

Ruiz challenges the sentence enhancements. He argues that once the court redesignated his prior convictions as misdemeanors he no longer qualified for those enhancements. The People agree, and so do we. We strike the enhancements, and affirm the judgment as modified.

DISCUSSION

On November 4, 2014, California voters enacted the Safe Neighborhoods and Schools Act (Proposition 47). Proposition 47 prospectively reduced certain drug- and theft-related offenses to misdemeanors for eligible offenders. It created two separate mechanisms for redesignating the convictions as misdemeanors, depending on whether the offender is currently serving a sentence or has completed his sentence. (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 743-744 (*Abdallah*).)

Section 1170.18, subdivision (a) authorizes the court to recall and resentence eligible defendants who are currently serving a felony sentence. Section 1170.18, subdivision (f) authorizes the court to redesignate convictions for defendants who have already completed their sentences.

Here, it is undisputed that Ruiz is an eligible offender. The application and effect of section 1170.18 to his prior convictions is determined as a matter of law. The order imposing the enhancements is therefore subject to de novo review. (*People v. Spicer* (2015) 235 Cal.App.4th 1359, 1375.)

Section 1170.18, subdivision (k) provides that once redesignated, prior convictions “shall be considered a misdemeanor for all purposes” except as it relates to possession or control of a firearm. The exception is not applicable here. Because Ruiz’s prior convictions were redesignated as misdemeanors prior to his sentencing in this case, the enhancements cannot be imposed. The courts have held that the plain language of the statute and its “for all purposes” requirement precludes the imposition of the prior prison term enhancements under these circumstances. (*People v. Call* (2017) 9 Cal.App.5th 856, 858 (*Call*); *People v. Kindall* (2016) 6 Cal.App.5th 1199, 1205 (*Kindall*); *Abdallah, supra*, 246 Cal.App.4th 736.)

California courts have held that “the redesignation of a felony or wobbler to a misdemeanor under Proposition 47 applies prospectively (that is, from the date of redesignation forward), but not retroactively (that is, as if the offense had been a misdemeanor from the date it was committed).” (*People v. Williams* (2016) 245 Cal.App.4th 458, 466, review granted May 11, 2016, S233539.) The California Supreme Court has granted

review in several cases on whether a defendant is “eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court had reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47.” (See *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted Mar. 30, 2016, S232900.) In each of those cases, the felony convictions underlying the prior prison term enhancements were redesignated after the defendant was sentenced.

Here, Ruiz successfully petitioned for redesignation prior to sentencing. Accordingly, we apply Proposition 47 relief prospectively, as was done in *Call, supra*, 9 Cal.App.5th 856, *Kindall, supra*, 6 Cal.App.5th 1199, and *Abdallah, supra*, 246 Cal.App.4th 736.

DISPOSITION

The judgment is modified to strike the prior prison term enhancements (as to both counts). The trial court is directed to forward an amended and corrected abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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TANGEMAN, J.

I concur:

GILBERT, P. J.

YEGAN, J., Dissenting:

I respectfully dissent. I adhere to my previously expressed opinion that the Proposition 47, dealing with prior conviction of a felony, has no effect upon the separate and distinct enhancement of service of a prior prison term. (See *People v. Acosta* (2016) 247 Cal.App.4th 1072, review granted Aug. 17, 2016, S235773 [service of a prior prison term does not vanish when the underlying felony conviction is reduced to a misdemeanor].) I am in disagreement with the cases which reach a contrary result based on the timing of Proposition 47 relief. (See, e.g., *People v Kindall* (2016) 6 Cal.App.5th 1199.)

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YEGAN, J.

Michael Lief, Judge

Superior Court County of Ventura

Christina Alvarez Barnes, under appointment by the
Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Senior
Assistant Attorney General, Mary Sanchez and Nima Razfar,
Deputy Attorneys General, for Plaintiff and Respondent.