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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONIDAS ONALDO ORDONEZ,

Defendant and Appellant.

B265139

(Los Angeles County
Super. Ct. No. PA009409)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Daniel B. Feldstern, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Mary Sanchez and Margaret E. Maxwell,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Leonidas Onaldo Ordonez petitioned to have his 1992 felony conviction designated as a misdemeanor pursuant to Proposition 47. He also asked the court to vacate his resulting 16-month sentence. The court granted Appellant's petition to redesignate his conviction, but denied his request to vacate the completed sentence.

We affirm. Appellant, under a different name, made the same argument regarding a different conviction in *People v. Vasquez* (2016) 247 Cal.App.4th 513 (*Vasquez*). As we stated in that case, Penal Code section 1170.18¹ allows resentencing only for petitioners currently serving a sentence for a qualifying felony. Because Appellant was not currently serving the sentence relating to his qualifying conviction, section 1170.18 did not confer jurisdiction on the trial court to vacate or otherwise change Appellant's completed sentence.

FACTUAL AND PROCEDURAL BACKGROUND

In April 1992, Appellant pleaded no contest to one count of petty theft with a prior under section 666, a felony. The details of the crime are not included in the record. Appellant was sentenced to 16 months in state prison.

“On November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, [183 Cal.Rptr.3d 362].) ‘Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible

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

defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).’ (*Id.* at p. 1091, [183 Cal.Rptr.3d 362].) Proposition 47 also ‘amended Penal Code section 666, petty theft with prior, and reduced the maximum prison sentence from three years to one year.’ (*People v. Solis* (2016) 245 Cal.App.4th 1099, 1110, [200 Cal.Rptr.3d 463].)” (*Vasquez, supra*, 247 Cal.App.4th at pp. 516-517.)

In January 2015, Appellant petitioned to have his conviction designated as a misdemeanor pursuant to section 1170.18, subdivision (f). At the hearing on the petition to redesignate his conviction, Appellant confirmed to the court that he is also known as Joel Benjamin Vasquez. He was challenging two different convictions, one in case number PA020208 regarding a 1995 conviction for a violation of section 666 (see *Vasquez, supra*, 247 Cal.App.4th at p. 516), and the conviction at issue here, the 1992 conviction in case number PA009409. The court granted the petitions designating the crimes as misdemeanors, but stated, “There will be no change in sentence since the sentences have already been completed.” Defense counsel argued that Appellant’s previously served sentences should be vacated. The court disagreed, stating that vacating a sentence is not appropriate “when it’s already been served. It’s a complete sentence.”

Appellant appealed the ruling relating to each of his convictions separately. Our previous published decision in *Vasquez, supra*, addressed the court’s ruling relating to the conviction in case number PA020208. We turn to Appellant’s largely duplicative arguments in this case.

DISCUSSION

Appellant argues that section 1170.18 required the court to vacate his completed sentence, because that statute states, “Any felony conviction that is recalled and resentenced . . . shall be considered a misdemeanor for all purposes.” (§ 1170.18, subd. (k).) We disagree.

In *Vasquez, supra*, we held that section 1170.18 does not authorize a court to vacate a sentence that already has been served and completed. (*Id.* at p. 518.) We pointed out that the language of section 1170.18 allows resentencing for people who currently are serving sentences, but says nothing about resentencing for those whose sentences already have been completed. (*Id.* at pp. 517-519.) We therefore held that under the plain language of section 1170.18, the trial court was “neither required nor permitted by statute to retroactively alter Vasquez’s sentence.” (*Id.* at p. 520.) The statutory analysis and discussion in *Vasquez* are directly applicable to this case, and compel the same result here.

Appellant argues that *Vasquez* was wrongly decided. He contends that the electorate intended Proposition 47 to be broadly construed to effectuate its purposes. (See Cal. Voter Information Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, p. 74, § 15, [as of Dec. 21, 2016].)

But Appellant does not point to any source that suggests that one of the purposes of Proposition 47 was to vacate a sentence, long since completed, at the time a felony is reclassified as a misdemeanor. To the contrary, as we discussed in *Vasquez*, the drafters of section 1170.18 included explicit references to resentencing in subdivisions (a) and (b), applicable

to people “currently serving a sentence.” (§ 1170.18, subds. (a) and (b); *Vasquez, supra*, 247 Cal.App.4th at p. 519.) Subdivisions (f) and (g), on the other hand, apply to a “person who had completed his or her sentence,” and say nothing about resentencing. (§ 1170.18, subds. (f) and (g); *Vasquez, supra*, 247 Cal.App.4th at p. 517-518.) To hold that a person who had completed his or her sentence was eligible for resentencing would require us to ignore or disregard these differences written into the language of the statute. We decline to do so.

For the reasons articulated here and in *Vasquez*, the petition correctly was denied.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.