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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC WAYNE CROWDER,

Defendant and Appellant.

B270207

(Los Angeles County
Super. Ct. No. MA065871)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles Chung, Judge. Affirmed as modified.

Maggie Shrout, 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, Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Eric Wayne Crowder appeals from a judgment of conviction entered after a jury trial. He challenges the imposition of four one-year prison term enhancements under Penal Code section 667.5, subdivision (b),¹ for prior felony convictions. At the sentencing hearing, the trial court redesignated three of Crowder's prior felony convictions as misdemeanors pursuant to Proposition 47, The Safe Neighborhoods and Schools Act (§ 1170.18). The court nevertheless proceeded to impose enhancements for those convictions. As the People concede on appeal, this was an error under our decision in *People v. Abdallah* (2016) 246 Cal.App.4th 736 (*Abdallah*). Accordingly, we modify the judgment to strike the three one-year enhancements that were based on Crowder's prior felony convictions that had been reduced to misdemeanors.

FACTUAL AND PROCEDURAL BACKGROUND

By information filed on June 9, 2015, Crowder was charged with first degree residential burglary, a serious felony. (§§ 459, 1192.7, subd. (c).) The information specially alleged that Crowder had a prior conviction of a serious felony (§ 667, subds. (a)(1), (b)-(i), 1170.12), specifically, assault with a deadly weapon (§ 245, subd. (a)(1)). The information also specially alleged that Crowder had four prior felony convictions for which he served prison terms within the meaning of section 667.5, subdivision (b): burglary (§ 459) in case No. MA025023; petty theft with a prior (§ 666) in case No. MA032008; and possession

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

of a controlled substance (Health & Saf. Code, § 11350, subd. (a)), in case Nos. MA044985 and MA055850.

The jury convicted Crowder of first degree burglary. At the February 2016 sentencing hearing, Crowder admitted all of the prior conviction allegations. The trial court imposed the upper term of six years for the burglary, doubled to 12 years as a second strike. It imposed an additional five years for the prior serious felony conviction. And, as relevant here, it imposed an additional four years for the four prior prison terms under section 667.5, subdivision (b). The total term imposed was 21 years.

Before Crowder admitted the prior convictions, the trial court observed that Crowder had filed Proposition 47 petitions as to his convictions in case Nos. MA025023, MA032008, and MA044985. Referring to the relief that Crowder sought in those petitions, the trial court stated that “it does appear that he qualifies, so all of those are reduced to misdemeanors.” Despite having just reduced those three convictions to misdemeanors pursuant to Proposition 47, the court proceeded to impose prior prison term sentence enhancements based on those convictions under section 667.5, subdivision (b).

DISCUSSION

Proposition 47 reclassified as misdemeanors certain drug and theft offenses that previously had been classified “as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Proposition 47 also established a resentencing procedure, codified in section 1170.18, for persons seeking to reduce to misdemeanors felony convictions they

previously have suffered. (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1261.) Under this procedure, such persons may, under subdivision (a) of section 1170.18, petition the trial court “for a recall of [their] sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Ibid.*)

In *Abdallah*, we addressed the intersection between resentencing under Proposition 47 and sentence enhancements under 667.5, subdivision (b). We noted that section 667.5, subdivision (b), “enhancement[s] require[] proof that the defendant “(1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction.” [Citations.]” (*Abdallah*, *supra*, 246 Cal.App.4th at p. 742, fn. omitted.) We further noted that “[c]ourts sometimes refer to the fourth requirement, which exempts from the enhancement defendants who have not reoffended for five years, as ““washing out”” . . . “because it carries the connotation of a crime-free cleansing period of rehabilitation after a defendant has had the opportunity to reflect upon the error of his or her ways.” [Citations.]” (*Ibid.*)

The defendant in *Abdallah* was convicted in June 2014 of possession of methamphetamine while armed with a firearm, possession of a firearm by a felon, and possession of methamphetamine. He previously had been convicted of felonies in 1997, 2002, and 2011 and had served time in prison for each of those offenses. The defendant was released on parole for the 2002 conviction in February 2005, but less than five years later, in 2009, was arrested for another felony and was then convicted

of that offense in 2011. Prior to sentencing the defendant on his 2014 conviction, the trial court reduced his 2011 conviction arising from the 2009 offense to a misdemeanor and resentenced him on that conviction pursuant to Proposition 47. When sentencing the defendant on the 2014 conviction, the court imposed a one-year sentence enhancement under section 667.5, subdivision (b), based on his 2002 conviction. The defendant challenged that enhancement, “argu[ing] that once the court resentenced his 2011 conviction [arising from the commission of a 2009 felony] as a misdemeanor he no longer qualified for the . . . enhancement for the 2002 conviction” because the resentencing meant that he had not committed a felony in 2009, i.e., within five years of his release from prison on the 2002 conviction. (*Abdallah, supra*, 246 Cal.App.4th at pp. 740, 743.)

We agreed with the defendant in *Abdallah* and invalidated the challenged enhancement. In reaching that conclusion, we observed that section 1170.18, subdivision (k), which was enacted as part of Proposition 47, provides that any felony conviction that has been recalled and resentenced “shall be considered a misdemeanor for all purposes,” with certain exceptions not relevant here. (*Abdallah, supra*, 246 Cal.App.4th at p. 744, italics omitted.) Applying that provision, we stated that “[o]nce the trial court recalled [the defendant’s] 2011 [conviction] and resentenced him to a misdemeanor, . . . [the conviction was] reclassified . . . as a misdemeanor ‘for all purposes[,]’ . . . [including for purposes of sentence enhancements; and t]herefore, at the time of [his] sentencing . . . , [the defendant] was not a person who had committed ‘an offense which result[ed] in a felony conviction’ within five years after his release on parole for his prior conviction” within the meaning of section 667.5,

subdivision (b)'s washing out requirement. (*Id.* at p. 746, citations omitted.)

Crowder's felony convictions in case Nos. MA025023, MA032008, and MA044985 were reduced to misdemeanors pursuant to Proposition 47 before he was sentenced in this case.² The trial court's imposition of three one-year enhancements under section 667.5, subdivision (b), for those convictions was contrary to *Abdallah* because, as Crowder argues and the People concede, the convictions were reduced to misdemeanors for all purposes, including enhancements; and following that reduction, the convictions no longer provided a basis for enhancements.³

² Because the enhancements here were imposed *after* the convictions on which they rested had been reduced to misdemeanors, this case does not present the question whether Proposition 47 applies retroactively to invalidate enhancements imposed *before* the convictions on which they rested had been reduced to misdemeanors. That question is presently before the California Supreme Court. (See *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted Mar. 30, 2016, S232900.)

³ Crowder did not challenge the enhancements in the trial court. However, an unauthorized sentence may be corrected at any time (*People v. Scott* (1994) 9 Cal.4th 331, 354), and under *Abdallah*, Crowder's sentence was unauthorized.

DISPOSITION

The judgment is modified to strike the three one-year enhancements imposed under section 667.5, subdivision (b), based on the convictions in case Nos. MA025023, MA032008, and MA044985. As so modified, the judgment is affirmed. The trial court is directed to prepare a modified abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation.

SMALL, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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