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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.

MICHAEL OSHEA SIMS,

Defendant and Appellant.

B272466

(Los Angeles County
Super. Ct. No. NA093791)

APPEAL from an order of the Superior Court of
Los Angeles County, James D. Otto, Judge. Appeal is Dismissed.

ORIGINAL PROCEEDINGS in HABEAS CORPUS.

Petition is denied.

David R. Greifinger, 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, Abtin Amir, and Paul S. Thies,
Deputy Attorneys General, for Plaintiff and Respondent.

Michael Oshea Sims was convicted of robbery in 2013 and sentenced to state prison with several enhancements, including three one-year enhancements under Penal Code section 667.5, subdivision (b),¹ for having served separate prison terms for felonies. Sims now purports to appeal from the trial court's order denying his motion for modification of his sentence after two of the felony convictions that were the bases for the section 667.5, subdivision (b), enhancements were redesignated as misdemeanors under Proposition 47, the Safe Neighborhoods and Schools Act of 2014. We treat Sims's appeal as a petition for writ of habeas corpus and deny relief: Sims was not eligible for resentencing to dismiss a prior prison term enhancement once his conviction for the underlying offense had become final.

FACTUAL AND PROCEDURAL HISTORY

On March 28, 2013 a jury convicted Sims of second degree robbery after he stole merchandise from a market and threatened a theft prevention officer with what appeared to be a gun. In a bifurcated proceeding the trial court found Sims had suffered one prior serious felony conviction within the meaning of section 667, subdivision (a), and one prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12) and had served three separate prison terms for felonies (§ 667.5, subd. (b)), including two separate felony prison terms for petty theft with a prior theft-related offense. The court sentenced Sims to an aggregate state prison term of 14 years, and we affirmed that judgment (*People v. Sims* (May 12, 2014, B248586) [nonpub. opn.]).

¹ Statutory references are to this code.

After his conviction became final, in August and September 2015 Sims successfully petitioned the trial court under Proposition 47 to have his two prior convictions for petty theft with a prior redesignated as misdemeanors. (§ 1170.18, subds. (f), (g).)

In March 2016 Sims, representing himself, filed a motion to modify his 14-year sentence for second degree robbery by striking the prior prison enhancements based on felony convictions that had since been reclassified as misdemeanors. Without identifying whether it was treating Sims's motion as a petition under section 1170.18 or a habeas corpus petition, the trial court denied Sims's resentencing request, concluding the reclassification of the prior felony convictions after his sentence had become final did not make Sims eligible for Proposition 47 relief. Sims filed a notice of appeal from the order denying the motion, and this court appointed counsel for him.²

² As a threshold matter, Proposition 47 does not authorize motions to strike sentence enhancements resting on felony convictions that were reduced to misdemeanors under section 1170.18; thus the denial of the Sims's motion to modify his sentence is not appealable. (See *People v. Totari* (2002) 28 Cal.4th 876, 886 [orders denying nonstatutory postjudgment motions are nonappealable].) Nonetheless, we treat Sims's purported appeal as an original petition for a writ of habeas corpus and consider the merits of his challenge to the sentence enhancements. (See *People v. Segura* (2008) 44 Cal.4th 921, 928, fn. 4.)

DISCUSSION

Proposition 47 reclassified as misdemeanors certain drug and theft-related offenses previously classified as felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). (See *People v. Valencia* (2017) 3 Cal.5th 347, 356 [listing additions and amendments to the Penal Code and Health and Safety Code under Proposition 47]; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091 [same].) Proposition 47 also added section 1170.18 to the Penal Code, creating procedures by which eligible offenders who had completed their sentences could obtain a redesignation of their felony offense to a misdemeanor (§ 1170.18, subds. (f), (g)) and eligible offenders currently serving a sentence for a since-reclassified felony could obtain a recall of sentence and resentencing (§ 1170.18, subds. (a), (b)). (*Valencia*, at p. 355; *People v. Morales* (2016) 63 Cal.4th 399, 404.)

Subdivision (k) of section 1170.18 provides, “Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes” except with regard to certain firearm restrictions. Citing subdivision (k), Sims contends the redesignation of his offenses of petty theft with a prior from felonies to misdemeanors in 2015 meant that those crimes no longer qualified as felonies, an essential element of the prior prison term enhancement under section 667.5, subdivision (b). Accordingly, he argues, he is entitled to be resentenced on his 2013 second degree robbery conviction without those prior prison term enhancements.

The issue presented in Sims’s appeal—whether a defendant whose conviction is final is entitled to be resentenced if the felony conviction on which a one-year prior prison term enhancement

was based has been reclassified as a misdemeanor under Proposition 47—is currently pending in the California Supreme Court. (See *In re Diaz* (2017) 8 Cal.App.5th 812, review granted, May 10, 2017, S240888; *People v. Jones* (2016) 1 Cal.App.5th 221, review granted Sept. 14, 2016, S235901; *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted, April 27, 2016, S233011.)³

To date, the courts of appeal, including this one, have uniformly held that a defendant whose conviction is final is not eligible for resentencing to dismiss a prior prison term enhancement based on a conviction that has since been reduced to a misdemeanor under Proposition 47. As our colleagues in Division Two of the Fourth District explained in *People v. Jones*, *supra*, 1 Cal.App.5th at pages 228-229, review granted September 14, 2016, the focus of the procedures authorized in Proposition 47 is the “redesignation of *convictions*, not enhancements.” Although the statute specifies a mechanism for an offender to obtain a retroactive redesignation of his or her felony conviction to a misdemeanor (§ 1170.18, subd. (f)), “nothing in the language of section 1170.18 allows or even contemplates

³ Also before the Supreme Court is the separate but related question whether a defendant who has been sentenced on his or her commitment offense but whose judgment of conviction is not yet final is eligible for resentencing if the felony conviction on which a one-year prior prison term enhancement was based has been reclassified as a misdemeanor under Proposition 47. (See *People v. Valenzuela* (2015) 244 Cal.App.4th 692, review granted March 30, 2016, S232900 [lead case]; *People v. Johnson* (2017) 8 Cal.App.5th 111, review granted, April 12, 2017, S240509; *People v. Evans* (2016) 6 Cal.App.5th 894, review granted, Feb. 22, 2017, S239635; *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201.)

the retroactive redesignation, dismissal, or striking of sentence enhancements imposed in a final judgment” (*Jones*, at p. 229; see § 1170.18, subd. (n) [nothing in this and related sections is intended to “diminish or abrogate the finality of judgments in any case that does not come within the purview of this section”].) As for subdivision (k)’s instruction to treat redesignated offenses as misdemeanors “for all purposes,” that provision applies “at most, prospectively to preclude future or non-final sentence enhancements based on felony convictions redesignated as misdemeanors under Proposition 47.” (*Jones*, at p. 230; cf. *People v. Abdallah* (2016) 246 Cal.App.4th 736, 746-747 [prior felony conviction that had been redesignated a misdemeanor prior to sentencing defendant on a new underlying felony could not be used to enhance new sentence]; see generally *People v. Brown* (2012) 54 Cal.4th 314, 319 [no part of Penal Code is retroactive, unless it expressly so declares].)

Finding the reasoning in *People v. Jones* persuasive, we, again, hold the reclassification of a felony offense to a misdemeanor under Proposition 47 does not apply to retroactively invalidate sentence enhancements that became final before Proposition 47’s passage. The trial court did not err in denying Sims’s petition.

DISPOSITION

Sims's purported appeal from the April 25, 2016 order denying his petition for recall of sentence and resentencing is dismissed. Treating the purported appeal as a petition for writ of habeas corpus, the petition is denied.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.