Filed 2/24/17 P. v. Rodabaugh CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DALE S. RODABAUGH, Defendant and Appellant.	B276503 (Los Angeles County Super. Ct. No. LA010066)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Kellogg, Judge. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On August 6, 1992, defendant and appellant Dale S. Rodabaugh pled no contest to four counts of robbery and admitted prior prison term allegations (Pen. Code, §§ 211, 667.5.)[1] These convictions arose out of four purse snatching allegations. Rodabaugh was sentenced to five years in prison.

Following the enactment of Proposition 47, Rodabaugh petitioned on February 9, 2016, to have his felony convictions designated as misdemeanors. The trial court denied the petition on the ground that Rodabaugh had been convicted of robbery, "which is not eligible for relief pursuant to Proposition 47."[2] Rodabaugh timely appealed from the order of denial.

We appointed counsel to represent Rodabaugh on appeal. After reviewing the record, 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, 441. We directed counsel to send the record on appeal and a copy of the opening brief to Rodabaugh, who filed a supplemental brief on November 23, 2016.

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

[2] Although the trial court's order is dated June 6, 2015, there appears to be a typographical error in the year as seen by the date of Rodabaugh's petition and the date of his appeal (which was July 22, 2016).

We have examined the record and determined the trial court was correct in finding that Rodabaugh is not eligible to have his robbery convictions designated as misdemeanors because robbery was not one of the crimes affected by Proposition 47.

Proposition 47, enacted by voters on November 4, 2014 and effective the following day, reduces certain drug and theft offenses to misdemeanors unless committed by ineligible defendants. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Proposition 47 provides, in pertinent part: "(a) A person . . . [currently] serving a sentence for a conviction . . . of a felony . . . who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense may petition for a recall of sentence . . . to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act." (§ 1170.18, subd. (a).) Section 1170.18, subdivision (f) provides: "A person who has completed his or her sentence for a conviction, whether by trial or plea, 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, may 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."

In his supplemental brief, Rodabaugh states: "It is my understanding that the primary purpose of Prop 47, is to classify the level of charges between a felony and misdemeanor, based not only on the penal statute charged, but more importantly on the actual conduct underlying the charge(s)." Not so. Rather,

Proposition 47 is conviction-based. Section 1170.18, subdivision (a) lists the specific drug and theft crimes that Proposition 47 subjected to potential reduction from felonies to misdemeanors. Robbery is not included as one of the offenses subject to Proposition 47.

Rodabaugh argues that even the trial court struggled with the question of whether the evidence met the requirements for convictions under the robbery statute; i.e., whether there was sufficient force involved in these purse snatchings to warrant a conviction for robbery rather than mere theft. However, the law is clear that robbery requires the defendant to have taken the property by use of either fear or " ' "*such force as is actually sufficient to overcome the victim's resistance* . . . ." ' [Citations.]" (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259, italics added; see also *People v. Abilez* (2007) 41 Cal.4th 472, 507 [" '[I]t is settled that a victim of robbery may be unconscious or even dead when the property is taken, so long as the defendant used force against the victim to take the property.' [Citations.] There is no requirement a victim be aware that someone was taking his or her property."].) By pleading no contest to robbery, Rodabaugh admitted that he used force or fear to commit the purse snatchings.

Rodabaugh claims that, despite the explicit language of section 1170.18, he is entitled to Proposition 47 relief because his convictions were never "rendered 'serious' pursuant to" section 969f. But that statute has no effect on the nature of the crimes Rodabaugh admitted he had committed. "[S]ection 969f . . . was enacted in order to prequalify a crime as a serious felony in the event of a defendant's future conviction of another serious felony. [Citation.] Its stated purpose was 'to avoid requiring a

prosecutor to reprove [*sic*] a previous conviction when it is alleged that a defendant has a prior serious felony conviction.' [Citation.]" (*People v. Leslie* (1996) 47 Cal.App.4th 198, 204.) "[S]ection 969f was introduced as a measure to aid the prosecution in not having to go through the time and expense to prove that a prior conviction was a serious felony. It is therefore a measure enacted solely for the benefit of the prosecution. If the court or counsel choose (or forget) to comply with section 969f, then in a subsequent case, the district attorney, instead of having a 'slam-dunk' admission by the defendant that the prior case was a serious felony, will be saddled with the burden of proving the same." (*Id.* at p. 205.) That Rodabaugh's convictions were never rendered "serious" pursuant to section 969f is of no assistance to him here.

We are satisfied that appellate counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The trial court's order is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.