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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.

LANCE LARN BLAIR,

Defendant and Appellant.

B272318

Los Angeles County

Super. Ct. No. YA071469

APPEAL from a post-judgment order of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Reversed and remanded with directions.

A New Way of Life Reentry Project, CT Turney and Pavithra Menon, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Lance Larn Blair appeals from the denial of his petition to dismiss a misdemeanor conviction under Penal Code section 1203.4a.<sup>1</sup> The case presents the following issue: May a defendant whose prior felony conviction has been reduced to a misdemeanor under Proposition 47 subsequently petition the court for dismissal of the conviction under section 1203.4a, despite having served a prison term for the original felony? We conclude he can. We therefore reverse the trial court's denial of defendant's petition for dismissal and remand with directions to consider the petition on the merits.

## PROCEDURAL BACKGROUND

On June 2, 2009, defendant pled no contest to one count of petty theft with prior (§ 666), a felony, and admitted a 2008 strike conviction for robbery (§ 211). On August 25, 2009, the court sentenced him in accordance with the plea agreement to 32 months in state prison—the low term of 16 months, doubled for the prior strike.

On February 1, 2016, the court granted defendant's petition under section 1170.18, subdivision (g), to redesignate the conviction as a misdemeanor. Defendant subsequently petitioned for dismissal of the misdemeanor under section 1203.4a, and on March 11, 2016, the court denied the petition on the ground that defendant had been sentenced to state prison for the conviction. The court did not consider the petition's merits.

Defendant filed a timely notice of appeal.

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

## DISCUSSION

Defendant contends that the statutory language of section 1203.4a does not exclude defendants who have served prison sentences, and as such, Proposition 47's mandate that a reclassified offense is "a misdemeanor for all purposes" applies to section 1203.4a petitions. Our colleagues in Division One recently addressed this precise issue, and as we find their reasoning persuasive, we quote the opinion at length.

### 1. Section 1203.4a

" 'Section 1203.4a requires a trial court to dismiss misdemeanor or infraction convictions in certain circumstances, and has no relevance in cases involving felonies.' (*People v. Sanders* (2012) 55 Cal.4th 731, 741.) In order to qualify for relief under section 1203.4a, subdivision (a), a defendant must have suffered a misdemeanor conviction, not be charged with or convicted of a subsequent crime, and have, since the date of that judgment, lived ' "an honest and upright life." ' (*People v. Hamdon* (2014) 225 Cal.App.4th 1065, 1069.) Persons falling under several specific exceptions may not obtain dismissal of their prior misdemeanor convictions under section 1203.4a. Having served a prison sentence is not among those exclusions; indeed, section 1203.4a contains no reference whatsoever to the sentence a defendant served for his or her offense." (*People v. Khamvongsa* (2017) 8 Cal.App.5th 1239, 1243, footnotes omitted (*Khamvongsa*).)

### 2. Redesignation of a felony under Proposition 47

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act. (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014).) The

initiative aimed to “ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from” the Act in elementary and high school programs, victims’ services, and mental health and drug treatment. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)

Proposition 47 targets these goals in four ways: (1) it amends the Penal Code and Health and Safety Code to reduce certain property crimes and possessory drug offenses from felonies or wobblers to misdemeanors; (2) it allows people serving felony sentences for newly-reduced offenses to ask the court to resentence them as misdemeanants (§ 1170.18, subds. (a), (b)); (3) it allows people who have finished serving qualified felony sentences to ask the court to reclassify the convictions as misdemeanors (§ 1170.18, subds. (f)–(h)); and (4) it creates a Safe Neighborhoods and Schools Fund to be financed with savings generated by the changes to the sentencing laws (Gov. Code, § 7599 et seq.). (Ballot Pamp., *supra*, text of Prop. 47, § 3, p. 70.)

“Proposition 47 explicitly anticipates that redesignation of an offense as a misdemeanor will affect the collateral consequences of a felony conviction. Among other things, suffering a felony conviction may result in the offender losing the right to vote (Elec. Code, § 2101), losing the right to own or possess a firearm (§ 29800, subd. (a)(1)), and, if the offender is convicted of a felony in the future, losing probation as a sentencing option (§ 1203, subd. (e)), and being exposed to sentence enhancements (§ 667.5, subd. (b)). A defendant is also barred from seeking relief under section 1203.4a for a felony conviction. (*People v. Sanders*, *supra*, 55 Cal.4th at p. 741.) To ensure qualified offenders who have had their prior felony

convictions redesignated can gain relief from those collateral consequences, section 1170.18, subdivision (k) specifies that ‘[a]ny felony conviction that is ... designated as a misdemeanor under subdivision (g) *shall be considered a misdemeanor for all purposes.*’ (Italics added.)

“The ‘for all purposes’ language is broad, and there is no suggestion that it encompasses certain collateral consequences of a felony conviction while excluding others, such as relief under section 1203.4a, that would be available if the crime were originally designated as a misdemeanor. On the contrary, section 1170.18, subdivision (k) by its terms applies to all such consequences with the sole exception that redesignation ‘shall not permit that person to own, possess, or have in his or her custody or control any firearm.’ [Citation.] The plain language of 1170.18, subdivision (k) thus demonstrates the voters’ intent to treat a redesignated misdemeanor like any other misdemeanor, except with regard to firearm restrictions. [Citation.]” (Khamvongsa, *supra*, 8 Cal.App.5th at p. 1244.)

**3. A completed prison sentence for a felony redesignated as a misdemeanor does not bar relief under section 1203.4a.**

There is no dispute in this case that defendant successfully petitioned for reclassification of his prior felony conviction to a misdemeanor under section 1170.18, subdivision (g). “Based on the unambiguous language of section 1170.18, subdivision (k), the court must treat [defendant’s] prior conviction as a misdemeanor for all purposes, including when determining whether [he] qualifies for relief under section 1203.4a.

“Arguing that [defendant]’s prison sentence for [his] prior felony (now misdemeanor) conviction precludes relief under

section 1203.4a, the Attorney General asserts that because the trial court had no authority to vacate the prison sentence [defendant] already served, ‘section 1203.4a did not apply.’ In so arguing, respondent relies on *People v. Vasquez* (2016) 247 Cal.App.4th 513, 519 (*Vasquez*), to contend that ‘resentencing under subdivision (k) of section 1170.18 applies only to convictions under section 1170.18, subdivision (b), and not to designations under section 1170.18, subdivision (g).’ The argument lacks merit.<sup>[2]</sup>

“Given that [defendant] did not request resentencing under section 1170.18, subdivision (b), or otherwise seek to vacate [his] previously served sentence, *Vasquez* has no application to this case. In *Vasquez*, the defendant sought to vacate his prison sentence following the successful redesignation of his felony conviction as a misdemeanor in order to avoid the immigration consequences of having served a prison term. (*Vasquez, supra*, 247 Cal.App.4th at pp. 518–519.) The court said nothing about the treatment of a reclassified misdemeanor conviction under section 1203.4a, but rather, held that a trial court has no authority to vacate or alter a completed sentence under section 1170.18, subdivisions (f), (g), or (k). Here, neither [defendant’s] application under section 1170.18, subdivision (f) nor [his] section 1203.4a petition sought any change to the sentence [he] had

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<sup>[2]</sup> Though we quote *Khamvongsa*’s analysis of the People’s argument in that case at length, we emphasize that *Khamvongsa*’s discussion applies equally to the People’s argument in this case, and that all quoted language from the People’s brief in *Khamvongsa* also appeared in the brief filed in this court. Put another way, the analysis is the same because the briefs are essentially the same.

already served for the [reclassified] offense. Hence, *Vasquez* is inapposite.

“The Attorney General’s reliance on *People v. Mendez* (1991) 234 Cal.App.3d 1773 (*Mendez*) is similarly misplaced. There, the People challenged the superior court’s jurisdiction to vacate defendant’s robbery conviction and substitute a misdemeanor after defendant had been discharged from the California Youth Authority (CYA). (*Id.* at pp. 1777–1778.) The appellate court reversed the denial of the People’s motion to vacate the superior court’s orders, declaring, ‘Neither section 1203.4 nor section 1203.4a applies to persons convicted of felonies and committed to CYA. *Postconviction relief for such persons is regulated by Welfare and Institutions Code section 1772.*’ (*Id.* at p. 1778, italics added.) Contrary to respondent’s sweeping characterization of the court’s holding, *Mendez* simply has nothing to say about whether a defendant who has served a prison term for an offense that has been redesignated as a misdemeanor is precluded from relief under section 1203.4a solely because of the prison term.

“Our conclusion that treatment of the redesignated offense as ‘a misdemeanor for all purposes’ (§ 1170.18, subd. (k)) applies to a petition under section 1203.4a finds support in cases arising under section 17, subdivision (b). Under that statute, a ‘wobbler’ (a crime punishable as a felony or a misdemeanor) becomes ‘a misdemeanor for all purposes’ when, among other circumstances, ‘the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.’ (§ 17, subd. (b)(3).)

“The California Supreme Court has interpreted this language to mean that, once a court designates an offense as a misdemeanor, ‘the offense thereafter is deemed a “misdemeanor for all purposes,” except when the Legislature [or electorate] has specifically directed otherwise.’ (*People v. Park* (2013) 56 Cal.4th 782, 795.) In *Park*, the trial court enhanced the defendant’s sentence by five years because he had suffered a prior serious felony conviction. However, the trial court in the prior case had reduced the felony to a misdemeanor under section 17, subdivision (b) before the defendant committed the second offense. (*Park*, at p. 787.) Our Supreme Court held that ‘when the court in the prior proceeding properly exercised its discretion by reducing the [felony] conviction to a misdemeanor, that offense no longer qualified as a prior serious felony ... and could not be used ... to enhance defendant’s sentence.’ (*Ibid.*)

“The plain language of section 1170.18, subdivisions (f) and (k) compels us to conclude that the trial court erred in denying [defendant’s] petition for dismissal of [his] misdemeanor conviction on the ground that [he] had served a prison sentence for the offense. Respondent offers no basis for interpreting the direction to treat an offense as a ‘misdemeanor for all purposes’ in section 1170.18, subdivision (k) differently than the identical charge in section 17, subdivision (b), and we find no reason to do so. (See *People v. Cornett* (2012) 53 Cal.4th 1261, 1269, fn. 6 [recognizing ‘the rule of statutory construction that identical language appearing in separate statutory provisions should receive the same interpretation when the statutes cover the same or analogous subject matter’].)” (*Khamvongsa, supra*, 8 Cal.App.5th at pp. 1244–1247, footnote omitted.)



Once the trial court designated defendant's 2009 felony conviction as a misdemeanor, section 1170.18, subdivision (k) reclassified that conviction as a misdemeanor "for all purposes." Defendant thus petitioned to withdraw his "plea of guilty, enter a plea of not guilty, and have the court dismiss the action under section 1203.4a as a 'defendant convicted of a misdemeanor and not granted probation.' Whatever sentence [defendant] had served for that offense was irrelevant under section 1203.4a, and the trial court erred in denying [his] petition" on that basis. (*Khamvongsa, supra*, 8 Cal.App.5th at p. 1247.)

## **DISPOSITION**

The post-judgment order denying defendant's Penal Code section 1203.4a petition is reversed and the matter is remanded for consideration of the petition on the merits.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.