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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RICARDO ESTRADA, Defendant and Appellant.	B272129 (Los Angeles County Super. Ct. No. BA164435)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rand S. Rubin, Judge. Affirmed.

Susan L. Jordan, 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, Noah P. Hill and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

In 1999, a jury convicted defendant and appellant Ricardo Estrada of evading a peace officer with willful or wanton disregard for persons or property (Veh. Code, § 2800.2, subd. (a)), unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)), and receiving stolen property (Pen. Code, § 496, subd. (a)).[1] Defendant was also found to have served a prior prison term (§ 667.5, subd. (b)), and suffered two prior convictions as defined in the three strikes law (§§ 667, subds. (b)–(i), 1170.12 subds. (a)–(d)). He was sentenced to an indeterminate term of 26 years to life.[2]

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

[2] The trial court sentenced defendant to 25 years to life in 1999. On appeal, this court affirmed defendant's convictions, but concluded that the trial court was required to impose or strike the section 667.5, subdivision (b) enhancement. At resentencing, the court imposed the enhancement, increasing defendant's sentence to 26 years to life.

After the 2012 passage of Proposition 36 (the "Three Strikes Reform Act," hereafter "the Act"), defendant filed a petition under section 1170.126 to recall his indeterminate sentence and to be resentenced as a second strike offender. The trial court denied the petition, finding that defendant posed an unreasonable risk of danger to public safety.

Defendant contends the trial court failed to apply the correct standard when making its dangerousness determination. He argues that the definition of unreasonable risk of danger to public safety contained in section 1170.18, which was added by initiative measure Proposition 47 ("The Safe Neighborhoods and Schools Act") in 2014, applies to resentencing petitions under the Act, such as his, which were pending at the time the initiative became effective. He contends the trial court erred in failing to consider his petition under this definition, and requests that we reverse and remand the matter for a determination of dangerousness as defined in Proposition 47.

We affirm the order denying the petition.

DISCUSSION[3]

In November 2012, California voters passed Proposition 36, which modified the three strikes law to permit sentences of 25 years to life in most cases only when the third or subsequent felony conviction is for a serious or violent felony. The proposition allows defendants previously sentenced to 25 years to life for a nonserious, nonviolent third felony conviction to petition for recall of their sentences. An eligible defendant is entitled to resentencing "unless the court, in its discretion, determines that resentencing the [defendant] would pose an unreasonable risk of danger to public safety." (§ 1170.126, subd. (f).) Proposition 36 does not define "unreasonable risk of danger to public safety," but provides that the court, in exercising its discretion, may consider "(1) [t]he petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison

[3] Defendant does not challenge the sufficiency of the evidence underlying the court's dangerousness determination. Absent such challenge, our resolution of the case rests upon the purely legal question of whether the proper standard was applied, and does not require a recitation of the facts or procedural history of the case.

commitments, and the remoteness of the crimes; [¶] (2) [t]he petitioner's disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) [a]ny other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (§ 1170.126, subd. (g).)

The electorate passed Proposition 47 in 2014 while defendant's petition was pending. Proposition 47 reduces specified narcotics and theft-related crimes from felony offenses to misdemeanors. It also provides that an eligible defendant is entitled to resentencing "unless the court, in its discretion, determines that resentencing the [defendant] would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) Proposition 47 specifies that "[a]s used throughout this Code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667," otherwise known as a "super strike." (§ 1170.18, subd. (c).) Soon after its passage, courts began considering whether Proposition 47 repealed and replaced the Act's definition of unreasonable risk of danger to public safety.

Defendant argues that Proposition 47's narrower definition of "unreasonable risk of danger to public safety," which focuses on the danger that defendant would commit specific "super strike" offenses rather than the danger he poses generally, applies to the Act because Proposition 47 states that its definition applies "throughout this Code" and Proposition 47 and the Act are both part of the Penal Code.

"[T]he basic principle of statutory and constitutional construction . . . mandates that courts, in construing a measure, not undertake to rewrite its unambiguous language. (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348.) That rule is not applied, however, when it appears clear that a word has been erroneously used, and a judicial correction will best carry out the intent of the adopting body." (*People v. Skinner* (1985) 39 Cal.3d 765, 775.) "Whether the use of [a particular word] is, in fact, a drafting error can only be determined by reference to the purpose of the section and the intent of the electorate in adopting it." (*Id.* at p. 776.)

Almost every court to consider this argument has rejected it and concluded that Proposition 47's use of the word "Code" (rather than "Act") was a drafting error. In reaching this conclusion, these courts reasoned that applying

Proposition 47's narrower definition to the Act: (1) is inconsistent with its mandate not to "diminish or abrogate the finality of judgments in any case not falling within the purview of this act" (§ 1170.18, subd. (n)); (2) goes far beyond its stated intent to give lower-level criminals who have committed a "nonserious and nonviolent property" offense a reduced sentence (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35) because it allows for the reduction of sentences for hardened criminals with at least two prior serious or violent felonies; and (3) makes little sense because Proposition 47 was enacted just two days before the Act's two-year deadline for seeking relief.[4] The issue is currently pending before the

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[4] Our Supreme Court has granted review on this issue, resulting in the complete or partial depublication of almost every published decision on the issue. (Compare *People v. Buford* (2016) 4 Cal.App.5th 886, review granted Jan. 11, 2017, S238790 [declining to apply Proposition 47's definition to the Act]; *People v. Florez* (2016) 245 Cal.App.4th 1176, review granted June 8, 2016, S234168 [same]; *People v. Myers* (2016) 245 Cal.App.4th 794, review granted May 25, 2016, S233937 [same]; *People v. Lopez* (2015) 236 Cal.App.4th 518, review granted July 15, 2015, S227028 [same]; *People v. Sledge* (2015) 235 Cal.App.4th 1191, review granted July 8, 2015, S226449 [same]; *People v. Guzman* (2015) 235 Cal.App.4th 847, review granted June 17, 2015,

California Supreme Court. (See *Chaney*, *supra*, 231 Cal.App.4th 1391; *Valencia*, *supra*, 232 Cal.App.4th 514.) While we recognize that this case will be governed by our Supreme Court's ultimate resolution of the issue, in the absence of the high court's guidance, we agree with the majority of Courts of Appeal that the definition of "unreasonable risk of danger to public safety" under the Act was not affected by the passage of Proposition 47.

S226410 [same]; *People v. Davis* (2015) 234 Cal.App.4th 1001, review granted June 10, 2015, S225603 [same]; *People v. Rodriguez* (2015) 233 Cal.App.4th 1403, review granted Apr. 29, 2015, S225047 [same]; *People v. Chaney* (2014) 231 Cal.App.4th 1391, review granted Feb. 18, 2015, S223676 (*Chaney*) [same]; *People v. Valencia* (2014) 232 Cal.App.4th 514, review granted Feb. 18, 2015, S223825 (*Valencia*) [same] with *People v. Cordova* (2016) 248 Cal.App.4th 543, review granted Aug. 31, 2016, S236179 [applying Proposition 47's definition to Proposition 36].)

DISPOSITION

The order denying defendant's petition for recall of sentence is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER J.

DUNNING, J.*

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