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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER ROBERT GREENLEE, Defendant and Appellant.	B268860 (Los Angeles County Super. Ct. No. KA055428)

APPEAL from an order of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Susan Sullivan Pithey and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Christopher R. Greenlee appeals from an order denying his petition under Proposition 47 to strike a one-year prior prison term enhancement (Pen. Code, § 667.5, subd. (b) ("667.5(b)"))[1] from his Three Strikes sentence on count 1, first degree robbery (§ 459). The order of denial is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was convicted in San Bernardino case No. FWV012678 of receiving stolen property (§ 496), a felony. Subsequently, he was convicted in the present case, case No. KA055428, of three felonies: first degree burglary (§ 459, count 1), assault with a deadly weapon by means likely to produce great bodily injury (former § 245, subd. (a)(1), count 2), and petty theft with five prior theft-related convictions (§ 666, count 3). A prior prison term allegation (§ 667.5, subd. (b)) based on the receiving stolen property conviction in case No. FWV012768 was found true. Two prior serious felony conviction allegations (§ 667, subd. (a)) also were found true.[2]

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[1] All further statutory references are to the Penal Code.

[2] These allegations were based on a first degree burglary conviction in case No. RCR18942 on June 20, 1991, and a first degree burglary conviction in case No. RCR21629 on October 14, 1992.

The judgment of conviction in the present case was modified and affirmed on appeal in 2003. (*People v. Greenlee* (Dec. 3, 2003, B162012) [nonpub. opn.].)[3] Appellant is currently serving a Three Strikes sentence of 25 years to life on count 1, first degree burglary, with two 5-year prior serious felony enhancements (§ 667, subd. (a)), and a 1-year prior prison term enhancement (§ 667.5, subd. (b)). He also is serving concurrent sentences of 25 years to life on counts 2 and 3.

Long after the judgment in this case had become final, the California electorate approved Proposition 47, the Safe Neighborhoods and Schools Act, on November 4, 2014. The Act took effect the following day. (Cal. Const., art. II, § 10, subd. (a).) "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated 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 allows those who completed their sentences to apply to have their felony convictions redesignated as misdemeanors. (§ 1170.18, subds. (f) & (g).) Under this provision, appellant petitioned the court in case No. FWV012768 to have his prior conviction under section 496 reduced to a misdemeanor.[4] (§§ 1170.18, subds. (f) & (g).) That petition was granted on July 1, 2015.

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[3] In the case No. B162012 appeal, appellant's sentence of 38 years to life was reduced to 36 years to life.

[4] As amended by Proposition 47, receiving stolen property (§ 496, subd. (a)) is a misdemeanor if the value of the stolen

Proposition 47 also allows current inmates to petition for a recall of sentence and to request resentencing in accordance with the amended versions of certain statutes, including section 666, petty theft with a prior theft conviction. (§ 1170.18, subd. (a).) Under that provision, appellant petitioned to recall his sentence and for resentencing on count 3, petty theft with prior theft convictions (§ 666), in accordance with the amended version of section 666. (§ 1170.18, subd. (a).) That petition was granted, and the section 666 conviction on count 3 was redesignated as a misdemeanor. The overall sentence remained the same because the sentence on count 2 is concurrent to the sentence on count 1.

Appellant also sought resentencing of the section 667.5(b) enhancement on count 1, first degree burglary (§ 459). He argued that because the enhancement was based on a prior conviction (receiving stolen property) that was now a misdemeanor, it must be stricken.

The trial court denied the request to strike the one-year section 667.5(b) enhancement on count 1. The court found that the law does not permit the striking of an enhancement based on the subsequent reduction of a prior conviction from a felony to a misdemeanor. Appellant filed a timely notice of appeal to challenge that denial.

DISCUSSION

The issue before us is whether a prior prison term enhancement (§ 667.5(b)) must be stricken if, after the judgment has become final, the prior conviction upon which the enhancement was based is reduced from a felony to a

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property did not exceed $950. (See *People v. Johnson* (2016) 1 Cal.App 5th 953, 957 (*Johnson*).)

misdemeanor. Cases involving similar issues are pending before our Supreme Court. (See, e.g., *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted Mar. 30, 2016, S232900); *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016, S233539; *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201; *People v. Isaia*, review granted Nov. 30, 2016, S237778.)

The section 667.5(b) enhancement was imposed only on count 1, first degree burglary, which is a felony, and Proposition 47 does not authorize resentencing of a felony conviction. In order to be eligible for relief under Proposition 47, the petitioner must be guilty of a misdemeanor. (See *Johnson*, *supra*, 1 Cal.App.5th at p. 965.)

Appellant acknowledges that Proposition 47 did not create a separate procedure for resentencing of enhancements. He argues that the right arises by implication under subdivision (k) of section 1170.18. Subdivision (k), which is subject to certain exceptions that do not apply here, provides that after a felony conviction is recalled and resentenced as a misdemeanor under subdivision (b) or redesignated as a misdemeanor under subdivision (g) of section 1170.18, it "shall be considered a misdemeanor for all purposes." Appellant reads "misdemeanor for all purposes" to mean that the reduction of a prior conviction to a misdemeanor (here, the July 2015 reduction of the receiving stolen property conviction in case No. FWV012768 from a felony to a misdemeanor) precludes the use of that conviction to impose a prior prison enhancement in a subsequent prosecution. (Cf. *People v. Park* (2013) 56 Cal.4th 782, 798 [after trial court reduces a wobbler to a misdemeanor under § 17, subd. (b), the offense may not be used as a prior felony conviction in future

cases].) But the enhancement did not violate subdivision (k) of section 1170.18, because it was imposed years before Proposition 47 took effect, when the prior conviction was still a felony.

Appellant's interpretation of subdivision (k) of section 1170.18 was rejected by *People v. Evans* (2016) 6 Cal.App.5th 894 (*Evans*). We agree with *Evans* that once a judgment of conviction attains finality,[5] the subsequent reduction of a prior conviction from a felony to a misdemeanor will not invalidate a sentencing enhancement. (*Id.* at p. 901, citing *People v. Abdallah* (2016) 246 Cal.App.4th 736, 746; see *Rivera*, *supra*, 233 Cal.App.4th at p. 1100.)

Appellant cites *People v. Flores* (1979) 92 Cal.App.3d 461, in which the defendant was convicted of a felony (possession of marijuana), and the legislature later reduced that crime to a misdemeanor. After the statutory amendment took effect, the prior marijuana conviction was used in a subsequent case to support a section 667.5(b) enhancement. (*Id.* at p. 470.) The appellate court reversed the enhancement, concluding that the amendment reducing the punishment for the prior offense barred its use in a subsequent case. (*Ibid.*, citing *In re Estrada* (1965) 63 Cal.2d 740.) This case is distinguishable from *Flores.* Here, the prior conviction (receiving stolen property) was a felony when it

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[5] A judgment is final when the time for filing an appeal and petition for certiorari to the United States Supreme Court have expired. (*Evans*, *supra*, 6 Cal.App.5th at p. 903.) In this case, the judgment was affirmed on December 3, 2003, and the petition for review was denied by the California Supreme Court on March 17, 2004. Assuming the 90-day period for filing a petition for certiorari commenced on March 17, 2004 (see U.S. Supreme Ct. Rules, rule 13), the period expired on June 15, 2004.

was used to impose a section 667.5(b) enhancement in 2002, and remained a felony until July 2015.

Because appellant has not identified a valid basis to strike the enhancement, we need not discuss his equal protection claim. (See *People v. Floyd* (2003) 31 Cal.4th 179, 188–191 [statute lessening punishment for offense does not raise equal protection concerns].)

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.