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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JAMES STANTON, Defendant and Appellant.	B267107 (Los Angeles County Super. Ct. No. GA078464)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Reversed and remanded with directions.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Wyatt E. Bloomfield, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

James Stanton appeals the trial court's order denying his petition for resentencing under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18).[1] In light of the Supreme Court's recent decision in *People v. Gonzales* (2017) 2 Cal.5th 858 (*Gonzales*), we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2009 the People charged Stanton with one count of felony second degree burglary (§ 459) and one count of forgery (§ 470, subd. (a)). The probation officer's report described the circumstances of the crimes: After law enforcement officers received information Stanton had recently cashed several fraudulent checks at a bank, they arrested him at the bank while he was attempting to cash another fraudulent check.[2] The amount of the individual checks reportedly ranged from $180 to $540.

Pursuant to a plea agreement, Stanton pleaded no contest to the burglary count, and the trial court dismissed the forgery count. The court sentenced Stanton to 16 months in prison.

In November 2014 California voters approved Proposition 47, which "reduced certain drug-related and theft-related offenses

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1 Statutory references are to the Penal Code.

2 The report does not specify in what sense the checks were "fraudulent," except to say that "bank officers learned [Stanton] did not have permission to cash the checks."

that previously were felonies or 'wobblers' [i.e., crimes chargeable or punishable as either a felony or a misdemeanor] to misdemeanors. [Citation.] It also enacted a procedure permitting inmates who are serving felony sentences for offenses that Proposition 47 reduced to misdemeanors to petition to have their felony convictions reclassified as misdemeanors and to be resentenced based on the reclassification." (*People v. Valencia* (2017) 3 Cal.5th 347, 351; accord, *People v. Morales* (2016) 63 Cal.4th 399, 404.)

In September 2015 Stanton petitioned for recall of his sentence and for resentencing under Proposition 47 (§ 1170.18, subd. (a)), contending Proposition 47 reduced his felony second degree burglary offense to a misdemeanor. In particular, Proposition 47 added section 459.5, which provides: "Notwithstanding Section 459 [defining burglary], shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950)." (§ 459.5, subd. (a).) Section 459.5 provides that, with exceptions not relevant here, "[s]hoplifting shall be punished as a misdemeanor." (*Ibid.*)

At the hearing on Stanton's petition, the parties agreed and the trial court found, based on the probation officer's report, that the offense underlying Stanton's conviction was entering a bank with the intent to cash a forged check in an amount less than $950. The trial court concluded, however, that Stanton's intent to cash the forged check was not an intent to commit larceny, as required by the definition of "shoplifting" in section 459.5, but an intent to commit a fraud. The court therefore ruled Proposition

47 did not reduce Stanton's offense to a misdemeanor, determined he was not eligible for relief under Proposition 47 for that reason, and denied his petition. Stanton timely appealed.

DISCUSSION

Stanton argues the trial court erred in denying his petition because the requirement of an "intent to commit larceny" in the definition of "shoplifting" in section 459.5 includes an intent to commit theft by, as Stanton did here, entering a bank to cash a forged check. Review is de novo. (See *People v. Salmorin* (2016) 1 Cal.App.5th 738, 743 ["[w]e review the trial court's construction of Proposition 47 de novo"].)

While this appeal was pending, the Supreme Court decided *Gonzales*, *supra*, 2 Cal.5th 858. At our request, the parties submitted supplemental briefing to address the effect of *Gonzales* on this appeal. We agree with the parties that *Gonzales* controls.

In *Gonzales*, the Supreme Court held that, because "the electorate . . . intended that the shoplifting statute apply to an entry to commit a nonlarcenous theft," the "defendant's act of entering a bank to cash a stolen check for less than $950, traditionally regarded as a theft by false pretenses rather than larceny, now constitutes shoplifting under [section 459.5]." (*Gonzales*, *supra*, 2 Cal.5th at p. 862.) Among other considerations, the Supreme Court reasoned that section 459.5 must be construed in light of section 490a, which provides that, "'[w]herever *any law* or statute of this state refers to or mentions larceny, embezzlement, or stealing, said law or statute shall hereafter be read and interpreted as if the word 'theft' were substituted therefor.'" (*Gonzales*, *supra*, 2 Cal.5th at pp. 868-

870.) The Supreme Court concluded the electorate intended "larceny" in section 495.5 to mean "theft," which included the defendant's offense of entering a bank to cash a stolen check he made out to himself for $125 and signed without authorization. (*Gonzales*, at pp. 862, 869; see § 484 [defining theft].) The Supreme Court also stated, "A defendant must be charged only with shoplifting when [section 459.5] applies" because subdivision (b) of that section "expressly prohibits alternate charging and ensures only misdemeanor treatment for the underlying described conduct." (*Gonzales*, at p. 876; see § 459.5, subd. (b).)

Gonzales, as the People concede, "is indistinguishable from this case." Stanton's offense was identical in all material respects to the defendant's offense in *Gonzales*: He entered a bank with the intent to cash a forged check in an amount of $950 or less. Proposition 47, as interpreted by the Supreme Court in *Gonzales*, reduced that offense to the misdemeanor offense of shoplifting. (*Gonzales*, *supra*, 2 Cal.5th at pp. 876-877.) Therefore, the trial court's pre-*Gonzales* ruling to the contrary and denial of Stanton's petition must be reversed.

It is not clear from the record, however, whether Stanton is entitled to relief under Proposition 47 and, if so, what kind of relief. Under section 1170.18, subdivision (a), "'[a] person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with' the statutes amended or added by Proposition

47. If the petitioner meets the criteria in subdivision (a) of section 1170.18, the felony sentence 'shall be recalled and the petitioner resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.'" (*People v. Bastidas* (2017) 7 Cal.App.5th 591, 595-596 (*Bastidas*) quoting § 1170.18, subds. (a), (b), review granted April 26, 2017, S240208; see *People v. Bush* (2016) 245 Cal.App.4th 992, 1001 [section 1170.18, subdivisions (a) and (b), provide a "two-step mechanism"].)

In addition, "Section 1170.18, subdivision (f) extends the benefits of Proposition 47 to persons who have completed their sentences. Thus, the statute states, 'A person who has completed his or her sentence for a conviction . . . 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.' (§ 1170.18, subd. (f).) Under section 1170.18, subdivision (g), upon receipt of a qualifying application, a court is required to 'designate the felony offense or offenses as a misdemeanor.'" (*Bastidas*, *supra*, 7 Cal.App.5th at p. 596; see *Gonzales*, *supra*, 2 Cal.5th at p. 863 ["[a] person who has already completed a felony sentence may petition to have his conviction designated a misdemeanor," citing § 1170.18, subds. (f), (g)].)

Stanton petitioned for recall and resentencing under section 1170.18, subdivision (a). As discussed, the trial court erred in denying that petition on the ground Proposition 47 did not reduce his offense to a misdemeanor. But the record does not demonstrate Stanton was necessarily entitled to resentencing. For one thing, it is unclear whether Stanton was "currently serving" his sentence for the underlying offense. (§ 1170.18, subd. (a).) The trial court sentenced him in December 2009 to 16 months, and Stanton filed his petition in September 2015. In addition, even if Stanton were eligible for resentencing under subdivision (a), the trial court did not reach the question whether it should nevertheless deny his petition under subdivision (b) on the ground resentencing him "would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).)

Finally, it may be that Stanton has already completed his felony sentence and is entitled to have his felony conviction designated as a misdemeanor under section 1170.18, subdivisions (f) and (g). The People appear to suggest this is the case when they state we should "remand the matter with directions to redesignate" Stanton's conviction. Therefore, we remand for a determination whether Stanton is entitled to any relief under section 1170.18.

DISPOSITION

The order is reversed, and the matter is remanded for a determination whether, in light of our holding Proposition 47 reduced Stanton's felony burglary conviction to a misdemeanor, he is entitled to any relief under section 1170.18.

SEGAL, J.

We concur:

PERLUSS, P. J.

MENETREZ, J.*

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