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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY JONES,

Defendant and Appellant.

A144224

(Sonoma County
Super. Ct. No. SCR-29120)

Defendant appeals from an order denying his petition under Penal Code section 1170.18¹ for resentencing of his felony conviction for possession of cocaine. Appointed counsel has filed a brief raising no issues, but requesting this court to independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant has filed supplemental brief arguing that the denial of his petition violated his constitutional rights and the intent of the voters in enacting Proposition 47. We find no arguable issues and shall affirm the trial court's order.

Background

Defendant is serving a state prison term of 25 years to life based on his 2002 conviction for possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) with three prior strike convictions, including a conviction in 1986 for attempted first degree murder (§§ 187, 664).

¹ Penal Code section 1170.18 was enacted as part of Proposition 47 in November 2014. (Prop. 47, § 14, as approved by voters, Gen. Elec. (Nov. 4, 2014, eff. Nov. 5, 2014).) All statutory references are to the Penal Code unless otherwise noted.

On November 14, 2014, defendant filed a petition requesting that his felony conviction for cocaine possession be reduced to a misdemeanor and he be resentenced pursuant to section 1170.18. The Sonoma County Superior Court denied the petition, finding that defendant's prior strike conviction for attempted murder made him ineligible for relief under section 1170.18.

Defendant filed a timely notice of appeal challenging the superior court's order denying his petition.

Discussion

“Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, [subdivision (a),] a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition to recall that sentence and request resentencing. (*Rivera, supra*, at p. 1092.) Section 1170.18, subdivision (i) provides, however, “The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of section 667” Because attempted murder is an enumerated offense under Section 667, subdivision (e)(2)(C)(iv)(IV), defendant is ineligible for resentencing under section 1170.18. Accordingly, there was no error in the court's denial of defendant's petition.

Defendant's arguments to the contrary, asserted in his supplemental brief, are without merit. First, defendant contends that his conviction violates his right to equal protection under the Fourteenth Amendment. He argues that an individual with his criminal history, convicted of possession of cocaine after passage of Proposition 47, would receive the benefit of the lower punishment, but that he does not because he was convicted before the law was changed. Numerous courts, however, have rejected similar equal protection challenges premised on “the timing of the effective date of a statute lessening the punishment for a particular offense.” (*People v. Floyd* (2003) 31 Cal.4th 179, 188.)

Defendant also argues that Proposition 47 was intended to reduce sentences for “low level” property and drug offenses for *all* offenders, including those already incarcerated. We disagree. Section 2 of Proposition 47 includes the following finding and declaration: “The people enact the Safe Neighborhoods and Schools Act 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 this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.” (Prop. 47, § 2, as approved by voters, Gen. Elec. (Nov. 4, 2014, eff. Nov. 5, 2014).)

Finally, contrary to defendant’s argument, inclusion of the resentencing procedure found in section 1170.18 for previously incarcerated offenders did not violate the single subject rule. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100 [“[A] measure complies with the [single subject] rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment.”].)

Disposition

The order denying defendant’s petition for resentencing under section 1170.18 is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.