

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES CLARENCE NEAL,

Defendant and Appellant.

A146831

(Solano County
Super. Ct. No. FCR305643)

James Clarence Neal (appellant) appeals from the trial court’s denial of his motion under Proposition 47¹ to have a felony conviction reclassified as a misdemeanor conviction. Appellant’s counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and requests that we conduct an independent review of the record. Appellant was informed of his right to file a supplemental brief and did not do so. Having independently reviewed the record, we conclude there are no issues that require further briefing, and shall affirm the judgment.²

¹Proposition 47 created a resentencing provision, Penal Code, section 1170.18, under which “[a] person currently serving a sentence for a conviction . . . 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” and request resentencing. (Pen. Code, § 1170.18, subd. (a).)

²This is appellant’s second appeal. In his prior appeal, he challenged the trial court’s denial of a motion to have four of his prior felony convictions reclassified as misdemeanor convictions. (*People v. Neal* (December 15, 2015, A145870) [nonpub. opn.].) We affirmed the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On February 14, 2014, a felony complaint was filed in case FCR305643 alleging appellant possessed a controlled substance, methamphetamine, on February 11, 2014, (Health & Saf. Code, § 11377, subd. (a); count 1) and had served two prior prison terms (Pen. Code, § 667.5, subd. (b)). Pursuant to a negotiated disposition, appellant pleaded no contest to count 1 and the trial court dismissed the prison prior allegations, suspended imposition of sentence, and placed appellant on probation for three years with the condition that he spend 30 days in county jail, with 30 days of credit for time served.

On January 5, 2015, counsel for appellant orally moved to have appellant's prior felony convictions reclassified as misdemeanors under Proposition 47. However, thereafter, defense counsel informed the trial court that he had reviewed appellant's criminal history and had discovered that appellant was disqualified from relief under Proposition 47 because he had suffered a conviction in 2006 for sexual battery (Pen. Code, § 243.4, subd. (a)), which required him to register as a sex offender (Pen. Code, § 290, subd. (c)).³

On March 17, 2015, appellant appeared for preliminary examination on a charge of possession of methamphetamine on March 4, 2015, alleged in a new felony case, FCR313177, and as a probation violation in the instant case, FCR305643. The parties agreed that appellant would not be entitled to a preliminary examination in case FCR313177 if Proposition 47 required reduction of the charge from a felony to a misdemeanor. The trial court took judicial notice of a certified criminal record that showed appellant had suffered a 2006 conviction for sexual battery for which he had been sentenced to four years in state prison and ordered to register as a sex offender under Penal Code, section 290. The court held appellant to answer on the felony charge in case FCR313177, stating, "I did find the 290 conviction to exist."

³Penal Code, section 1170.18, subdivision (i), provides: "The provisions of this section shall not apply to persons who have one or more prior convictions for an offense . . . requiring registration pursuant to subdivision (c) of Section 290."

On April 27, 2015, pursuant to a negotiated disposition, appellant admitted violating probation. He also pleaded no contest to a related charge in case FCR312764 that he had driven a motor vehicle with a license suspended for driving while intoxicated (Veh. Code, § 14601.2). The trial court dismissed a second count in case FCR312764 and sentenced appellant to credit for time served. The court also dismissed case FCR313177 (which had charged possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a))), and dismissed a fourth case, FCR309488, which charged appellant with driving without a valid license (Veh. Code, § 12500)). The court sentenced appellant to the upper term of three years in state prison, suspended execution of sentence, and reinstated appellant to probation with Proposition 36 drug court conditions.

On May 28, 2015, appellant filed a “Motion to Recognize Proposition 47 Eligible Probation Cases as an Automatic Misdemeanor” in which counsel argued the trial court should reduce appellant’s conviction from a felony to a misdemeanor. He argued, among other things, that Proposition 47 applies “as a matter of law” to convictions for qualifying offenses committed before its effective date, provided the defendant has not yet been sentenced. Appellant noted that because he had been placed on probation with execution of sentence suspended and had not yet been sentenced, he was entitled to have his felony reduced to a misdemeanor.

The trial court denied the motion on the ground that appellant was not eligible. On June 5, 2015, appellant filed a timely notice of appeal of the court’s order denying his Proposition 47 motion. He requested a certificate of probable cause, which the court granted, but with the notation that a certificate is not required for an appeal from the denial of a Proposition 47 motion.

DISCUSSION

Appellant’s counsel has filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and asks this court to independently review the entire record to determine if it contains any issues which would, if resolved favorably to the appellant, result in reversal or modification. A review of the record has disclosed no reasonably arguable

appellate issue, and we are satisfied that counsel has fully complied with her responsibilities. (*Ibid.*; *People v. Kelly* (2006) 40 Cal.4th 106.) The trial court did not err in denying appellant's Proposition 47 petition. Appellant was adequately represented by counsel at every stage of the proceedings. There are no issues that require further briefing.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.