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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON MASCITELLI,

Defendant and Appellant.

A147550

(Contra Costa County  
Super. Ct. No. 5-132174-4)

Aaron Mascitelli appeals from an order denying his petition to have his felony convictions for second degree commercial burglary reclassified as misdemeanors under Penal Code section 1170.18,<sup>1</sup> part of Proposition 47, the Safe Neighborhoods and Schools Act. His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

I. BACKGROUND

Appellant entered a no contest plea to two counts of second-degree commercial burglary on December 4, 2013, in exchange for a dismissal of other charges. (§§ 459, 460, subd. (b).) He received a split sentence of three years and eight months, with 12 months to be served in county jail and 32 months of mandatory supervision. (§ 1170, subd. (h)(5).)

<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

On August 5, 2015, following several revocations and reinstatements of his mandatory supervision status, appellant filed a form petition for resentencing under Proposition 47. The petition alleged appellant was still serving a sentence for the two commercial burglary convictions, but it did not otherwise state facts in support of his eligibility for resentencing. The trial court denied the petition by an order issued January 8, 2016, on the ground that appellant was “ineligible due to conviction for a PC 290 registerable offense.”

## II. DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note appointed counsel has filed a *Wende/Anders* brief raising no issues, appellant has been advised of his right to file a supplemental brief, and appellant did not file such a brief. We have independently reviewed the entire record for potential reversible error and find none.

Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by designated ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) It also created section 1170.18, which allows a person currently serving a sentence for an offense that is now a misdemeanor under Proposition 47 to petition for a recall and resentencing. (*Ibid.*)

As the trial court recognized, a defendant is ineligible for relief under Proposition 47 if he or she has “one or more prior convictions for an offense. . . requiring registration pursuant to subdivision (c) of Section 290.” (§ 1170.18, subd. (i).) The probation report indicates appellant was charged with indecent exposure under section 314, subdivision (1), a registerable offense, in 1990 and again in 2003. But, according to the probation report, those cases were resolved by pleas to lesser, non-registerable offenses. If the trial court had access to additional information showing appellant was in fact convicted of a registerable offense, it does not appear in the appellate record.

Even if the trial court was mistaken that appellant was ineligible for relief under Proposition 47 based on his criminal record, its ruling was correct. (See *People v. Zamudio* (2008) 43 Cal.4th 327, 351, fn. 11 [“ ‘we review the ruling, not the court’s

reasoning’ ”].) Appellant had the burden of establishing he was entitled to have his felony burglary convictions treated as misdemeanors. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136–138.) Proposition 47 did not reduce second degree burglary to a misdemeanor, though it created a new misdemeanor offense of “shoplifting” under section 459.5, which “displaces the prior felony of second degree burglary where a defendant entered a commercial establishment with the intent to commit a theft involving property valued at less than \$950.” (*People v. Chen* (2016) 245 Cal.App.4th 322, 324.) Appellant’s petition did not include any information showing his burglary convictions constitute shoplifting as defined by section 459.5, or would otherwise qualify as misdemeanors. The trial court did not err in denying the petition, though our affirmance is without prejudice to the superior court’s consideration of a subsequent petition that contains evidence of appellant’s entitlement to relief. (*People v. Johnson* (2016) 1 Cal.App.5th 953, 970–971.)

We are satisfied that appellant’s appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

### III. *DISPOSITION*

The judgment is affirmed.

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NEEDHAM, J.

We concur.

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JONES, P.J.

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SIMONS, J.

(A147550)