

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER URIOSTEGUI,

Defendant and Appellant.

B265786

(Los Angeles County
Super. Ct. No. YA043602)

APPEAL from an order of the Superior Court of Los Angeles County,
Mark Arnold, Judge. Affirmed.

Julie Jakubik, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Javier Uriostegui appeals from an order denying his application to have his felony conviction designated as a misdemeanor, after the trial court sentenced him to prison for three years following his felony conviction for assault with a firearm. (Pen. Code, §§ 245, subd. (a)(2), 1170.18, subd. (f).) We affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

The record reflects as follows. On June 8, 2000, appellant was convicted (by plea of guilty or no contest) of the felony of assault with a firearm, and the trial court sentenced him to prison for three years.¹ On February 11, 2015, appellant, in pro per, filed in the trial court (superior court case No. YA043602) an application to have the above felony conviction designated as a misdemeanor pursuant to Penal Code section 1170.18, subdivision (f).² On that same date, the trial court issued an order denying the application because the “[d]efendant was not convicted of any crime that is covered by Prop 47,” therefore, he was “ineligible for the relief requested.” On April 8, 2015, appellant appealed from the order.

¹ A recitation of the facts of the present offense is unnecessary to resolve this appeal.

² Penal Code section 1170.18, subdivision (f), states, “A person who has completed his or her sentence for a conviction, whether by trial or plea, 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.” Although the document appellant filed was entitled “Application/Petition for Resentencing and People’s Response” (some capitalization omitted), appellant declared in the filing that he had completed his sentence on his conviction for assault with a firearm and that he sought reduction of the offense to a misdemeanor. The filing was therefore properly an “application . . . to have the felony conviction . . . designated as [a] misdemeanor[.]” (Pen. Code, § 1170.18, subd. (f)), and we deem the filing as such an application.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed October 19, 2015, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. That 30-day notice was returned as undeliverable to appellant's federal prison address. As a result, on February 1, 2016, this court ordered that "this clerk's office will mail another 30-day letter to appellant at the address (reflected in the letter of appellant's appellate counsel filed in this court on January 29, 2016) to which said counsel previously mailed a copy of appellant's *Wende* brief." By notice filed February 1, 2016, the clerk of this court complied with the order. No response has been received to date.

REVIEW ON APPEAL

"On November 4, 2014, the voters enacted Proposition 47, "the Safe Neighborhoods and Schools Act" (hereafter Proposition 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)" (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2 (*T.W.*)) "Section 1170.18 'was enacted as part of Proposition 47.'" (*Ibid.*) "Proposition 47 'was intended to reduce penalties for "certain nonserious and nonviolent property and drug offenses from wobblers or felonies to misdemeanors." Those crimes were identified as "Grand Theft," "Shoplifting," "Receiving Stolen Property," "Writing Bad Checks," "Check Forgery," and "Drug Possession." [Citation.]'" (*T.W.*, at p. 652, italics added.) Accordingly, "[t]he initiative [Proposition 47] . . . added sections 459.5, 490.2 and 1170.18 to the Penal Code; amended sections 473, 476a, 496 and 666 of the Penal Code; and amended Health and Safety Code sections 11350, 11357 and 11377." (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.)

“For persons currently serving sentences for a felony conviction that would be a misdemeanor under Proposition 47, and for persons who have *already completed* a sentence for *such an offense*, the initiative specifies the procedures for relief.” (*People v. Diaz* (2015) 238 Cal.App.4th 1323, 1328-1329, italics added.) For the latter group of persons, Penal Code section 1170.18, subdivision (f) (see fn. 2, *ante*) specifies the procedure for relief. (*Diaz*, at p. 1329.)

Appellant’s application demonstrates he was, within the meaning of Penal Code section 1170.18, subdivision (f), “[a] person who has completed his . . . sentence for a conviction, . . . of a felony,” i.e., assault with a firearm (Pen. Code, § 245, subd. (a)(2)). However, that crime is not listed in Penal Code section 1170.18, subdivision (a), nor was Penal Code section 245, subdivision (a)(2) added or amended by Proposition 47. It is thus not true that appellant is “[a] person who has completed his . . . sentence for a conviction, . . . of a felony . . . who would have been guilty of a *misdemeanor* under this act had this act been in effect at the time of the offense.” (Pen. Code, § 1170.18, subd. (f), italics added.) Proposition 47 left the offense of a violation of Penal Code section 245, subdivision (a)(2) unchanged, and that offense is a felony. (Pen. Code, §§ 17, subd. (a), 245, subd. (a)(2).) The trial court correctly concluded that appellant was not convicted of any crime covered by Proposition 47 and that he was ineligible to have his conviction for a violation of Penal Code section 245, subdivision (a)(2) reduced to a misdemeanor. The trial court’s order denying appellant’s application to have his felony conviction designated as a misdemeanor was proper.

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The order denying appellant's application to have his felony conviction designated as a misdemeanor is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

HOGUE, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

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