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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL AYIKU OTUBUAH,

Defendant and Appellant.

E062408

(Super.Ct.No. FWV801484)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. Affirmed.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Michael Otubuah appeals from an order denying his petition under Penal Code section 1170.18¹ to reduce from felonies to misdemeanors seven convictions for second degree burglary and three convictions for forgery by fraudulent possession of a check. We affirm the order.

FACTS AND PROCEDURE

Defendant participated in an identity theft ring that involved stealing checks from businesses, then counterfeiting and passing them. Three separate businesses were the victims in this case.

On November 7, 2008, a jury convicted him of 60 counts, mostly involving identity theft, forgery by possession of a fraudulent check and second degree commercial burglary. The trial court sentenced defendant to 20 years and four months. An appeal resulted in the reversal of 24 of the 27 forgery counts. The sentence for each of the reversed counts had been imposed but stayed pursuant to section 654, so the appeal resulted in no net reduction in the sentence to be served.

On November 4, 2014, voters enacted Proposition 47, entitled “the Safe Neighborhoods and Schools Act” (hereafter Proposition 47). It went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) As of its effective date, Proposition 47 classifies as misdemeanors certain drug- and theft-related offenses that previously were

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

felonies or “wobblers,” unless they were committed by certain ineligible defendants. (§ 1170.18, subd. (a).)

On November 10, 2014, defendant filed a pro per petition for resentencing pursuant to Proposition 47. The superior court summarily denied the petition on November 21, 2014. Defendant appealed.²

On November 25, 2014, defendant filed a second petition for resentencing, this time using legal counsel. On August 7, 2015, the court granted the petition as to counts 11, 12, and 20 (two second degree commercial burglary counts and receiving stolen property), and dismissed counts 10 and 13 (grand theft and attempted grand theft) because they were “alternate statements of petty theft.” At that time, the court resentenced defendant per both the Proposition 47 petition and the opinion in *People v. Michael Otubuah* (April 7, 2010, E047271 [nonpub. opn.]). Defendant’s new sentence was 18 years and four months.

Defendant appealed. That appeal was consolidated with the pending appeal of the summary denial of defendant’s first, pro per, petition.

The counts at issue here are seven counts of second degree commercial burglary (§ 459), counts 3, 4, 6, 8, 15, 17 and 19, and three counts of forgery by fraudulent possession of a check (§ 475, subd. (c)), counts 35, 37 and 44.

² The appeal of the second petition was consolidated with the appeal of the first petition.

DISCUSSION

Upon defendant’s request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The court’s order is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.