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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.

ALEJANDRO CRISTOBAL,

Defendant and Appellant.

E062506

(Super.Ct.No. FSB1303605)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kenneth Barr and Michael A. Smith,* Judges. Affirmed.

Lindsey M. Ball, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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

Defendant and appellant Alejandro Cristobal pled guilty to grand theft of personal property exceeding \$950 (Pen. Code, § 487, subd. (a)).¹ Defendant also admitted that he had suffered one prior serious and violent felony strike conviction, to wit, a 2009 robbery (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). In return, defendant was sentenced to a stipulated term of two years eight months in state prison with credit for time served. The trial court subsequently denied defendant's petition to be resentenced pursuant to section 1170.18. Defendant appeals from the denial of his petition for resentencing. We find no error and affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND²

On July 18, 2013, defendant took money and a computer from Christopher Hamilton.

On August 23, 2013, a felony complaint was filed charging defendant with grand theft of personal property exceeding \$950 (§ 487, subd. (a); count 1); second degree commercial burglary (§ 459; count 2); receiving stolen property (§ 496, subd. (a); count 3); and misdemeanor petty theft (§ 484, subd. (a); count 4). The complaint also alleged that defendant had suffered one prior serious and violent felony strike conviction, to wit, a 2009 robbery (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and two prior prison terms (§ 667.5, subd. (b)).

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The factual background is taken from the probation report.

On November 1, 2013, pursuant to a plea agreement, defendant pled guilty to count 1 and admitted the prior strike conviction allegation. In return, defendant was promised a stipulated term of two years eight months in state prison. After directly examining defendant, the trial court found that defendant understood the nature of the charges and the consequences of the plea; that the plea was entered into freely, voluntarily, knowingly, and intelligently; and that there was a factual basis for his plea. Defendant was thereafter immediately sentenced in accordance with his plea agreement and awarded 172 days credit for time served.

On November 4, 2014, voters enacted Proposition 47, which became effective the next day. (Cal. Const., art. II, § 10, subd. (a).) The focus of Proposition 47 was to render misdemeanors a class of certain drug- and theft-related offenses that previously were felonies or “wobblers,” unless they were committed by certain ineligible defendants. Proposition 47 also created a new resentencing provision—section 1170.18—by which a person currently serving a felony sentence for an offense that is now a misdemeanor, may petition for a recall of that sentence and request resentencing in accordance with the offense statutes as added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in subdivision (a) of section 1170.18 shall have his or her sentence recalled and be “resentenced to a misdemeanor . . . unless the court, in its

discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (*Id.*, subd. (b).)³

On November 13, 2014, defendant, in pro per, filed a petition to be resentenced under Proposition 47.

On November 21, 2014, the trial court denied defendant’s petition for resentencing pursuant to section 1170.18. The court found defendant did not satisfy the criteria in section 1170.18 and that defendant was not eligible for resentencing.

On December 11, 2014, defendant filed a notice of appeal from the denial of his petition for resentencing under section 1170.18.

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. 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 conduct an independent review of the record.

³ Proposition 47 also created a process whereby eligible persons who have already completed their sentences may have the particular conviction or convictions designated as misdemeanors. (§ 1170.18, subds. (f), (g).)

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

As noted above, Proposition 47 makes certain drug- and theft-related offenses misdemeanors unless the offenses were committed by certain ineligible defendants. These offenses had been previously designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors). Proposition 47 added section 490.2, which provides, “Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken *does not exceed* nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor” unless the person is otherwise ineligible for misdemeanor resentencing. (Italics added.) Here, defendant pled guilty to grand theft of personal property *exceeding* \$950 (§ 487, subd. (a)). As such, defendant was not eligible to be resentenced under section 1170.18.

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.

III

DISPOSITION

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

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.