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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.

LESLIE DENISE DUNCAN,

Defendant and Appellant.

E062984

(Super.Ct.No. FSB1402192)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Leslie Denise Duncan was charged by felony complaint with identity theft with a prior conviction. (Pen. Code,¹ § 530.5, subd. (c)(2), count 1.) Pursuant to a plea agreement, defendant pled guilty to count 1. The parties stipulated that the complaint and police reports provided a factual basis for the plea. The court immediately sentenced defendant to the agreed upon term of two years in county prison, with 102 days of custody credits. Defendant subsequently filed a petition to be resentenced pursuant to section 1170.18, which the court denied. Defendant appeals from the denial of her petition for resentencing. We affirm.

PROCEDURAL BACKGROUND

On September 4, 2014, defendant entered a plea agreement and pled guilty to one count of identity theft with a prior conviction. (§ 530.5, subd. (c)(2).) The court sentenced her to two years in county prison in accordance with the plea agreement.

In November 2014, California voters approved Proposition 47 (effective November 5, 2014). (§1170.18.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for

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

a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

On November 13, 2014, defendant filed a petition for resentencing, pursuant to Proposition 47. (§ 1170.18.) On November 21, 2014, the court found that defendant was not eligible for resentencing and denied the petition.

On December 4, 2014, defendant wrote a letter to the court requesting a formal hearing. On December 18, 2014, the court noted that defendant’s petition for resentencing was denied, but it set a hearing for a conflict panel to be present and review defendant’s request.

On January 9, 2015, counsel appeared on behalf of defendant and informed the court that defendant’s petition was denied, and she wrote a letter to the court and put the matter back on calendar herself. Counsel requested additional time to discuss the matter with defendant to “clear it up.” The court continued the matter.

On January 23, 2015, the court held a hearing and again denied defendant’s petition.

On February 23, 2015, defendant filed a letter stating that she wanted to appeal the court’s denial.

On March 9, 2015, appellate counsel filed an amended notice of appeal.

DISCUSSION

Defendant appealed and, upon her 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 and a potential arguable issue: whether she was eligible for resentencing under section 1170.18. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which she has not done.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.