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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.

GABRIEL GOMEZ, JR.,

Defendant and Appellant.

E063879

(Super.Ct.No. FSB1205624)

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.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On March 5, 2013, in case No. FSB1205624, an information charged defendant and appellant Gabriel Gomez Jr. with possession of a firearm by a felon under Penal Code section 29800, subdivision (a) (count 1); and possession of a controlled substance with a firearm under Health and Safety Code section 11370.1, subdivision (a) (count 2). The information specially alleged that defendant had suffered two prior prison terms, and after being released, defendant did not remain free from prison for five years thereafter under Penal Code section 667.5, subdivision (b).

On July 9, 2014, defendant pled guilty to one count of possession of a controlled substance with a firearm under Health and Safety Code section 11370.1, subdivision (a), in exchange for a prison term of four years. Thereafter, the trial court sentenced defendant to the upper term of four years. The court dismissed the remaining counts and allegations. Moreover, at the sentencing hearing, the trial court sentenced defendant in an unrelated case for unlawfully driving a vehicle under Vehicle Code section 10851, subdivision (a), in case No. FSB1402290. The sentence in case No. FSB1205624 was ordered to be served concurrently with the sentence in case No. FSB1402290.

On November 19, 2014, defendant filed an in propria persona petition for reduction of his sentence under Proposition 47. Defendant moved to have his convictions for possession of a controlled substance with a firearm in case No. FSB1205624 and unlawful driving of a vehicle from case No. FSB1402290 reduced to misdemeanors. On December 12, 2014, the court denied defendant's petition.

On May 14, 2015, again in propria persona, defendant filed a “Motion to Vacate/Set Aside Order Dated 12-12-2014 Denying Prop 47 Petition.” Defendant also filed a second, modified petition for resentencing under Proposition 47 to reduce his conviction for possession of a controlled substance with a firearm only. On May 28, 2015, the trial court denied defendant’s motion to vacate its earlier order. The court did not address defendant’s second, modified Proposition 47 petition.

On June 12, 2015, defendant filed a timely notice of appeal from the trial court’s order.

B. FACTUAL HISTORY¹

On December 19, 2012, an officer with the Colton Police Department conducted a traffic stop. Defendant was the driver of the car. Defendant consented to a search of the vehicle. In the car, the officer found 12.1 grams of a substance suspected to be methamphetamine and a loaded .357 Magnum revolver.

DISCUSSION

After defendant appealed, and 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 to undertake a review of the entire record.

¹ The parties stipulated that the police reports would serve as the factual basis of defendant’s guilty plea.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. In appellate counsel's brief before this court, counsel argues as a potential issue whether the trial court erred in denying defendant's petition for resentencing under Proposition 47.

On November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) "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: [Penal Code] section 1170.18. Under [Penal Code] section 1170.18, a person 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for 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; see Pen. Code, § 1170.18, subd. (a).)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error. (See Pen. Code, § 1170.18 [convictions under Health and Safety Code section 11370.1 and Vehicle Code section 10851 not statutorily enumerated offenses qualifying for reduction from felonies to misdemeanors].)

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

KING
Acting P. J.

CODRINGTON
J.