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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.

GUILLERMO CAMPOS,

Defendant and Appellant.

E064312

(Super.Ct.No. BLF10000106)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal; Guillermo Campos, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Guillermo Campos appeals after the trial court denied his petition under Penal Code section 1170.18 to have his 2011 drug offense declared a misdemeanor. We affirm.

FACTS AND PROCEDURAL HISTORY

In March 2011, defendant pleaded guilty to one felony count of possession of a controlled substance (heroin) in a prison, in violation of Penal Code section 4573.6. Defendant also admitted one prior strike allegation (Pen. Code, §§ 667, subds. (c), (e), 1170.12, subd. (c)), based on a 2005 robbery conviction. Another strike allegation (robbery conviction in 2002) was dismissed, as well as two prior prison term allegations. The court imposed the upper term of four years in state prison, doubled to eight years because of the strike. The sentence was ordered to run consecutive to defendant's existing prison term.

In March 2015, defendant filed a petition under Penal Code section 1170.18, seeking to have his drug-possession-in-prison offense declared a misdemeanor. The People respond that defendant's offense under Penal Code section 4573.6 is not a felony that qualifies for reduction to a misdemeanor. The trial court entered an order denying defendant's petition on that ground.

Defendant filed a notice of appeal from the court's ruling.

ANALYSIS

Upon defendant's appeal, this court appointed counsel to represent him. Counsel has filed a brief under authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a brief statement of the case and requesting this court undertake an independent review of the record. The procedural posture suggests one potentially arguable issue: Did the trial court properly deny defendant's resentencing motion?

We have also afforded defendant the opportunity to file a personal supplemental brief, which he has done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the entire record and find no arguable issues.

As to the propriety of the ruling below, denying defendant's motion for resentencing, the trial court correctly determined that defendant's offense was not one of the enumerated offenses eligible for treatment as a misdemeanor. In November 2014, the voters passed Proposition 47, the Safe Neighborhoods and Schools Act, reducing the punishment for specified drug- and theft-related offenses to misdemeanors. Some of the enumerated offenses were previously felonies, while others were punishable as either a felony or misdemeanor. (See *People v. Park* (2013) 56 Cal.4th 782, 789 [“wobbler[s]” are offenses chargeable, or subject to punishment, as either a felony or misdemeanor].) Penal Code section 1170.18 provides for recall of the sentence, and reduction to a misdemeanor, with respect to the following enumerated offenses: “Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by [Proposition 47].” (Pen. Code, § 1170.18, subd. (a).) Penal Code section 1170.18 grants the trial court discretion to deny the request for misdemeanor sentencing, to an otherwise eligible defendant, upon a finding that “resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (Pen. Code, § 1170.18, subd. (b).)

Although defendant committed a drug possession offense, it is not one of the listed offenses qualifying for misdemeanor sentencing. It could conceivably be argued that

treating defendant differently from other drug offenders would be a violation of equal protection. However, defendant's offense was qualitatively different from the listed (now misdemeanor) drug offenses, because he possessed the drugs (heroin) inside the controlled environment of a state prison. There is a rational basis for treating defendant's offense more harshly than other simple drug-related offenses. (See *People v. Alvarez* (2001) 88 Cal.App.4th 1110, 1116 [Fourth Dist., Div. Two] [finding the rational basis test applicable to equal protection challenge involving "an alleged sentencing disparity"].)

In his personal supplemental brief, defendant does not raise any issues with respect to the denial of his petition for resentencing under Penal Code section 1170.18. Rather, he purports to argue issues going to the validity of the plea in the first instance. That is, he argues, first, that the trial court erred in dismissing the second prior strike allegation, and the two prior prison term allegations, because it failed to state its reasons for doing so, and because it dismissed them for an improper reason, i.e., solely based upon defendant's willingness to plead guilty. We are highly doubtful that defendant wishes to have the dismissed strike and prior prison term allegations reinstated.

Defendant then argues, second, his real point: the court's willingness to dismiss the extra strike allegation and the prison term priors persuaded or pressured him into accepting the plea. Defendant says that he was asked, "has anyone put any pressure on you, or anyone close to you, to get you to plead in this case?" to which defendant replied, "Yes." Defendant then claims that the court "failed to further inquire about this matter, and did nothing to further investigate who pressured [him] and why."

To the contrary, the record demonstrates otherwise. When defendant said, “Yes,” in answering the question of whether he had been pressured to enter into the plea, the trial court immediately clarified by asking a follow up question: “Did anyone force you [to] do this?” To this question, defendant responded, “No.” The court then inquired, “You’re doing this of your own free will?” Defendant clearly answered, “Yes.”

In any case, defendant’s personal supplemental brief solely raises issues going to the validity of the underlying plea in 2011. Defendant should have raised these issues on direct appeal from the judgment. It is now too late to take such an appeal.

DISPOSITION

The trial court properly denied defendant’s petition under Penal Code section 1170.18 for misdemeanor resentencing; his offense did not qualify for misdemeanor treatment. Defendant has failed to raise any arguable issues on appeal from the trial court’s ruling on his resentencing petition. The order denying his petition is affirmed.

McKINSTER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.