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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.

ALBERT VALENTINE SEGOBIA III,

Defendant and Appellant.

E064664

(Super.Ct.No. RIF10001768)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.

Affirmed.

Jennifer Peabody, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Marvin E. Mizell, and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Albert Segobia was sentenced to 10 years in prison for possessing controlled substances or paraphernalia in a penal institution. (Pen. Code, § 4573.6.) Two of those 10 years were based on two 1-year prison-prior enhancements for felonies the court later reclassified as misdemeanors under Proposition 47. Segobia appeals from the court’s denial of his request to strike the two enhancements from his sentence, reducing his term from 10 to eight years. Because we conclude Proposition 47 does not authorize courts to strike or dismiss sentence enhancements retroactively, we affirm.

I

FACTS AND PROCEDURAL BACKGROUND

Following a jury trial in 2011, the trial court sentenced Segobia to 10 years in prison as follows: six years for unlawfully possessing a controlled substance or paraphernalia in a penal institution (Pen. Code, § 4573.6)¹ plus four years for four prison priors.² With the passage of Proposition 47 in November 2014, two of Segobia’s prison-prior felony offenses became eligible for resentencing to misdemeanors—a 1998 conviction for possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and a 2006 conviction for possession of a controlled substance (Health & Saf. Code,

¹ All undesignated statutory references are to the Penal Code.

² The court also imposed but stayed a four-year term for Segobia’s conviction for unlawfully possessing drugs or paraphernalia in a penal institution. (§ 4573.8.) After we reversed this conviction in case No. E055050, the trial court dismissed the charge, and ordered all other aspects of the sentence to remain in effect.

§ 11377, subd. (a)). In July and August 2015, the superior court granted Segobia’s requests to reclassify those two felony convictions as misdemeanors.

In September 2015, Segobia sent a letter to the superior court requesting it strike the two prison-prior enhancements in his 2011 felony drug conviction that were based on his reclassified 1998 and 2006 drug convictions. The court denied the request and Segobia timely appealed.

II

DISCUSSION

A. *Standard of Review*

The interpretation of a statute is subject to de novo review on appeal. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) We apply the same principles that govern statutory construction to interpret voter initiatives like Proposition 47. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) ““The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]”” (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) “In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction. [Citations.] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

[Citations.]” (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008.) This appeal also requires us to decide whether the principles of equal protection require striking the enhancements, a question we review de novo. (*Raef v. Appellate Division of Superior Court* (2015) 240 Cal.App.4th 1112, 1120.)

B. *Proposition 47 Does Not Provide for Striking Enhancements Retroactively*

Segobia contends the superior court erred by denying his request to strike the two 1-year enhancements in his 2011 felony drug conviction sentence that were based on his reclassified 1998 and 2006 drug convictions after his 2011 conviction was final and he had begun serving his prison sentence. Several courts have found that Proposition 47 does not apply retroactively to section 667.5, subdivision (b) enhancements in cases where the judgment imposing the enhancement has become final.³ We reach the same conclusion.

Proposition 47 changed portions of the Penal Code to reclassify as misdemeanors “certain drug- and theft-related offenses” that were previously punishable as felonies or wobblers. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Proposition 47 also created two procedures making those changes available to offenders who had previously been convicted of reclassified offenses. (§ 1170.18; *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1217 (*Alejandro*).) If the offender is “currently serving a

³ The California Supreme Court has granted review on these cases. (See *People v. Valenzuela*, review granted Mar. 30, 2016, S232900; *People v. Carrea*, review granted Apr. 27, 2016, S233011; *People v. Williams*, review granted May 11, 2016, S233539; *People v. Ruff*, review granted May 24, 2016, S233201.)

sentence for a *conviction*” of a felony that “would have been . . . a misdemeanor” had Proposition 47 been in effect at the time of the offense, he “may petition for a recall of sentence before the trial court that entered the judgment of *conviction* in his or her case.” (§ 1170.18, subd. (a), italics added.) If the offender “has completed his or her sentence,” he or she “may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” (§ 1170.18, subd. (f).) Section 1170.18, subdivision (k), further provides, “Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes,” except for ownership of a firearm.

Section 667.5 requires “[e]nhancement of prison terms for new offenses because of prior prison terms.” Under subdivision (b), “where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term.” (§ 667.5, subd. (b).)

Nothing in the plain language of Proposition 47 provides a remedy for someone who is currently serving a sentence for an “enhancement” and not a “conviction.” Section 1170.18 refers only to convictions and persons who are currently serving, or who have already served, sentences for convictions. Segobia is not currently serving a sentence on the convictions that were reclassified to misdemeanors; he is serving on the

enhancements. Nothing in the language of section 1170.18 provides a procedure for reaching back and resentencing on an enhancement when a case is final and the current conviction is ineligible for resentencing.

Moreover, nothing in the language of section 1170.18 indicates it is intended to be applied retroactively to enhancements on convictions that are final and do not qualify under Proposition 47. Section 3 specifies that no part of the Penal Code “is retroactive, unless expressly so declared.” “[T]he language of section 3 erects a strong presumption of prospective operation, codifying the principle that, ‘in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature [or electorate] . . . must have intended a retroactive application.’ [Citations.] Accordingly, ‘a statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.’ ” *(People v. Brown (2012) 54 Cal.4th 314, 324 (Brown).)*

Section 1170.18 provides no express retroactive provision except as previously discussed regarding reducing a *conviction* on which a sentence is currently being served. Moreover, section 1170.18, subdivision (n) provides, “Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.” The intent from the language is clear; it was not to disturb final judgments of conviction which do not fall under Proposition 47. Here, Segobia was convicted of possessing controlled substances or paraphernalia in a penal institution in violation of section 4573.6, which is a crime not affected by Proposition 47.

There is no language in section 1170.18 indicating it was intended to have the retroactive collateral consequences Segobia requests.

Contrary to Segobia's contention, *People v. Flores* (1979) 92 Cal.App.3d 461 (*Flores*) does not mandate otherwise. In *Flores*, the defendant was convicted in 1977 for the sale of heroin and his sentence was enhanced due to a 1966 felony conviction for the sale of marijuana. (*Id.* at pp. 470-471.) However, in 1976, the Legislature amended the statute, reducing the punishment for selling marijuana to a misdemeanor. On *direct appeal* of the 1977 sale of heroin conviction, the appellate court found the 1976 amendment applied to all new sentences and the enhancement could not be imposed. (*Id.* at pp. 470-474.) *Flores* does not authorize the retroactive application Segobia seeks in this case. In *Flores*, the retroactivity/reduction in punishment issue arose on appeal of the current crimes, whereas here, Segobia's 2011 felony drug conviction and sentence was final long before Proposition 47's enactment.

Segobia also relies on *People v. Park* (2013) 56 Cal.4th 782 (*Park*), which is easily distinguishable from this case.⁴ In *Park*, the defendant's sentence for his current crimes included a five-year enhancement under section 667, subdivision (a) for a prior serious felony conviction. Prior to the defendant committing his current crimes, the trial court reduced the prior offense to a misdemeanor under section 17, subdivision (b)(3),

⁴ Additionally, in his opening brief Segobia relied on *People v. Buycks* (2015) 241 Cal.App.4th 519; however, the California Supreme Court granted review of that case after Segobia filed his brief, rendering the case superceded and uncitable. (*Id.*, review granted Jan. 20, 2016, S231765; Cal. Rules of Court, rule 8.1105(e)(1).)

and then dismissed it pursuant to section 1203.4, subdivision (a)(1). (*Park, supra*, at pp. 787-788.) On review, the appellate court held the conviction remained a prior serious felony for purposes of sentence enhancement under section 667, subdivision (a), but the California Supreme Court disagreed as follows: “[W]hen the court in the prior proceeding properly exercised its discretion by reducing the . . . conviction to a misdemeanor, that offense no longer qualified as a prior serious *felony* within the meaning of section 667, subdivision (a), and could not be used, under that provision, to enhance defendant’s sentence.” (*Park, supra*, at p. 787.) That was not the situation in this case. Here, the prior conviction was not reduced to a misdemeanor until after Segobia committed the felony drug offense in this case, and after the sentence was final. *Park* is not controlling in a situation such as this where a sentence is final and thereafter a prior conviction which was used as an enhancement is reduced to a misdemeanor.

Next, Segobia argues that the general presumption of prospectivity in section 3 is subject to the counterpresumption of retroactivity set forth in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), and that *Estrada* applies here. As recently construed by our Supreme Court in *Brown, supra*, 54 Cal.4th 314, *Estrada* erects a “reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments.” (*Brown*, at p. 324.) But *Estrada*’s presumption applies only to convictions that are “not yet final.” (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1465.) “A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari [with the United

States Supreme Court] have expired.” (*Ibid.*) The two convictions used to enhance Segobia’s sentence under section 667.5, subdivision (b) in this case became final long ago. Where, as here, the prior conviction being used to support an enhancement under section 667.5, subdivision (b) is “final” under *Estrada*, *Estrada*’s counterpresumption does not apply; to hold otherwise is to “stretch[] the *Estrada* rule to [its] breaking point.” (*People v. Diaz* (2015) 238 Cal.App.4th 1323, 1336.)

Last, Segobia argues *Alejandro, supra*, 238 Cal.App.4th 1209 supports his argument that Proposition 47 authorizes striking enhancements retroactively. In *Alejandro*, our colleagues in Division 1 of the Fourth Appellate District held that Proposition 47 applies to juvenile defendants, that Alejandro N. was entitled to have his second degree burglary conviction reclassified as a misdemeanor, and that he was entitled to have his DNA records retained as a consequence of his conviction (§ 296) expunged from the database (§ 299), “unless there [was] another basis to retain it apart from his mere commission of the reclassified misdemeanor offense.” (*Id.* at pp. 1217, 1226, 1228.) Segobia’s reliance on *Alejandro* is misplaced because the availability of DNA expungement for an offender whose conviction was reclassified is not a retroactive application of Proposition 47. Expungement is available under section 299 for a person who “has no past or present offense or pending charge which qualifies that person for inclusion within the state’s DNA and Forensic Identification Database and Databank Program. . . .” In other words, once a court reclassifies as a misdemeanor a felony for which the offender had to provide DNA samples under section 296, the offender is

presently—not retroactively—entitled to expungement under section 299. There is no similar penal code provision offering relief from enhancements. The only way an offender would be entitled to have an enhancement stricken is upon a finding that Proposition 47 applies retroactively to enhancements.

We conclude section 1170.18, subdivisions (a), (b), (f), and (g) explicitly allow offenders to request and courts to grant retroactive designation of offenses such as Segobia’s prison prior, but no provision allows offenders to request, or courts to order, retroactively striking an enhancement based on a redesignated prior offense. Absent such an express provision, we cannot apply the statute retroactively. (§ 3.)

C. *Equal Protection Does Not Require Retroactive Striking of Enhancements*

Segobia contends refusing to strike the enhancements violates his right to equal protection of the laws. (U.S. Const., 14th Amend., § 1 [“No state shall . . . deny to any person within its jurisdiction the equal protection of the laws”]; Cal. Const., art. I, § 7 [“A person may not be . . . denied equal protection of the laws”].) He argues that refusing to give Proposition 47 reclassification retroactive effect sets up two classes of defendants: (1) those sentenced now, who are able to avoid enhancements based on prior felony convictions (because the reclassifications they obtain on those prior convictions apply prospectively); and (2) those sentenced in the past, who are unable to avoid enhancements based on prior felony convictions (because the reclassifications they obtain on those prior convictions do not apply retroactively). What distinguishes these two

classes of defendants is whether they were able to seek reclassification before or after the current sentence was imposed, which is a function of the date Proposition 47 took effect.

It is well settled that “ ‘[a] reduction of sentences only prospectively from the date a new sentencing statute takes effect is not a denial of equal protection.’ ” (*People v. Floyd* (2003) 31 Cal.4th 179, 189; see also *People v. Smith, supra*, 234 Cal.App.4th 1460, 1468 [“a statute ameliorating punishment for particular offenses may be made prospective only without offending equal protection”].) This makes sense because a classification defined by the date an ameliorative statute takes effect rationally furthers the state’s legitimate interest in “assur[ing] that penal laws will maintain their desired deterrent effect by carrying out the originally prescribed punishment as written.” (*In re Kapperman* (1974) 11 Cal.3d 542, 546.) We, therefore, conclude Segobia has not shown the superior court’s refusal to strike his sentence enhancements violated his right to equal protection of the laws.

III
DISPOSITION

The judgment is affirmed.

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SLOUGH
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.