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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.

GEORGE PATRICK HARNEY,

Defendant and Appellant.

E064930

(Super.Ct.No. RIF1102687)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## **FACTUAL AND PROCEDURAL HISTORY**

On June 6, 2011, in case No. RIF1102687, a felony complaint charged defendant and appellant George Patrick Harney with 14 counts. Pertinent to this appeal are counts 3 and 10. Count 3 alleged that defendant committed second degree burglary in violation of Penal Code<sup>1</sup> section 459 by unlawfully entering a building located on the March Air Force Base on May 31, 2011, with the intent to commit theft and a felony. Count 10 charged defendant with possessing cocaine base for sale in violation of Health and Safety Code section 11351.5. The complaint further alleged that defendant had suffered four strikes and one felon prior within the meaning of Penal Code section 667.

On August 5, 2011, defendant pled guilty to seven counts, including counts 3 and 10, and admitted one strike prior. The plea agreement provided that defendant would be sentenced to 18 years in prison. Count 10 would be the principal term, and defendant would receive the upper term of five years, doubled for the prior strike, plus doubled consecutive sentences of one-third the midterm on the other six counts, including count 3.

Also on August 5, 2011, the parties agreed that case No. RIF1102687 would be consolidated with case No. RIF1102730, and that defendant would plead to another count of second degree burglary of a building located on the March Air Force Base on May 25, 2011, which would become count 15. Defendant pled guilty in accordance with the agreement. The factual basis for counts 3 and 15 were that defendant went into March Air Force Base with the intent to steal something.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Defendant was sentenced to the 18-year sentence as agreed. On the new burglary charge, defendant received a concurrent sentence of two years. The court dismissed the remaining counts. Defendant did not file a timely notice of appeal.<sup>2</sup>

On March 6, 2015, defendant filed a document entitled, “Petition for Modification of Sentence.” Defendant argued that he was entitled to resentencing under the current version of Health and Safety Code section 11351.5, which now provided for a sentencing range of two, three, and four years, instead of three, four, and five years that was in effect when he was sentenced. Defendant also argued he was entitled to have his two second degree burglary convictions reduced to misdemeanors under Proposition 47.

On March 16, 2015, the People filed a response arguing defendant was not entitled to a reduction to misdemeanors unless he met his burden of proof that he was entitled to reductions. The People also argued that defendant’s convictions were not qualifying felonies.

On August 26, 2015, the trial court appointed the Riverside County Public Defender to represent defendant. The court scheduled a hearing at which defendant could introduce relevant facts on the burglary counts.

At the hearing on October 16, 2015, defense counsel stated that she had spoken to the attorney who had represented defendant in 2011. The attorney “indicated to me that the deputies came upon [defendant] while he was perhaps maybe attempting to take some

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<sup>2</sup> On January 3, 2013, we received a notice of appeal that defendant had lodged with respect to case No. RIF1102687, which became case No. E057786. On January 23, 2013, we dismissed the appeal as untimely.

sort of metal, and that is the only information I have on that.” Defense counsel argued that Proposition 47 should be interpreted broadly. The trial court denied relief, ruling that an Air Force base is not a commercial establishment.

On December 1, 2015, defendant filed a timely notice of appeal.

### **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.

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

### **DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

SLOUGH  
J.