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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re MICHELLE BEEMER,

on Habeas Corpus.

H042720
(Santa Clara County
Super. Ct. Nos. C1482231; C1486379)

Petitioner Michelle Beemer filed an original petition for writ of habeas corpus in this court. On September 22, 2014, the trial court sentenced petitioner to a five-year term and suspended execution of the concluding two years of the term, which was deemed a period of mandatory supervision (Pen. Code, § 1170, subd. (h)).¹ The five-year term included two one-year enhancements for prior prison terms (§ 667.5, subd. (b) (hereafter 667.5(b))).

In November 2014, while petitioner was serving the sentence that she now challenges, voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act.” (Proposition 47, as approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014; see Cal. Const., art. II, § 10, subd. (a).) Proposition 47 reclassified certain crimes deemed nonserious as misdemeanors subject to lesser punishment. (See Voter Information Guide, Gen. Elec. (Nov. 4, 2014) (hereafter Voter Guide), text of Prop. 47, §§ 5-13.)²

¹ All further statutory references are to the Penal Code unless otherwise stated.

² Proposition 47 added section 459.5 (shoplifting) (Voter Guide, text of Prop. 47, § 5.), amended section 473 (forgery) (Voter Guide, text of Prop. 47, § 6), amended section 476a (making, drawing, or passing a worthless check, draft, or order) (Voter Guide, text of Prop. 47, § 7), added section 490.2 (petty theft of \$950 or less) (Voter Guide, text of Prop. 47, § 8), amended section 496 (receiving stolen property) (Voter Guide, text of Prop. 47, § 9), amended section 666 (petty theft with a prior) (Voter Guide, text of Prop. 47, § 10), and amended Health and Safety Code

Proposition 47 also added section 1170.18, which established two separate procedures to allow persons previously convicted of felonies that had been downgraded to straight misdemeanors under Proposition 47 to benefit from those ameliorative changes to the extent statutorily provided. (Voter Guide, text of Prop. 47, § 14.) Persons who are currently serving sentences for felony convictions that are now misdemeanors under Proposition 47 may follow the procedure for obtaining resentencing by filing a petition for recall of sentence. (§ 1170.18, subs. (a), (b).) Persons who have completed their sentences for felony convictions that are now misdemeanors under Proposition 47 may follow the procedure for obtaining a redesignation of a conviction as a misdemeanor by filing an application for designation. (§ 1170.18, subs. (f), (g).)

The petition asserts that the two prior prison term enhancements are no longer valid because the underlying convictions were redesignated misdemeanors “for all purposes” under the procedure established by Proposition 47 (§ 1170.18, subs. (f), (g), (k)), and it seeks to have those sentence enhancements stricken. This court issued an order on January 11, 2006, instructing the Director of the Department of Corrections and Rehabilitation to show cause why relief should not be granted.

We now conclude that a prior prison term enhancement that was imposed before the effective date of Proposition 47 and that is part of a sentence that is currently being served is not automatically invalidated when the underlying conviction is redesignated a misdemeanor pursuant to an application for designation (§ 1170.18, subs. (f), (g)).³

sections 11350 (possession of specified controlled substances) (Voter Guide, text of Prop. 47, § 11), 11357 (unauthorized possession of concentrated cannabis or marijuana) (Voter Guide, text of Prop. 47, § 12), and 11377 (unauthorized possession of specified controlled substances) (Voter Guide, text of Prop. 47, § 13).

³ The issue in this case is *not* whether a court sentencing a defendant upon conviction may impose a prior prison term enhancement if, by the time of sentencing, the underlying felony conviction has been redesignated a misdemeanor pursuant to section 1170.18, subdivision (g).

Accordingly, petitioner is not entitled to any relief and we will discharge the order to show cause.⁴

I

Facts

Petitioner filed a petition for writ of habeas corpus seeking to have the two one-year enhancement terms imposed for prior prison terms stricken. After finding that the petition stated a prima facie case for relief, and we issued an order to show cause, directing the “Director of the Department of Corrections and Rehabilitation . . . to show cause in this court . . . why petitioner is not entitled to the relief requested.” The Attorney General, representing the Director of the Department of Corrections and Rehabilitation, thereafter filed a return, and petitioner responded by filing a traverse. The following material facts are undisputed.

The return does not dispute that petitioner was confined or restrained of her liberty at Elmwood Women’s Correctional Facility by the Santa Clara County Department of Corrections. The traverse states, however, that petitioner is currently under mandatory supervision.

⁴ Since this case does not involve review of a judgment not yet final, the rule of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) has no application. Properly understood, *Estrada* “articulate[ed] the reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments. [Citation.]” (*People v. Brown* (2012) 54 Cal.4th 314, 324 (*Brown*)). “[A] judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. [Citations.]” (*People v. Nasalga* (1996) 12 Cal.4th 784, 789, fn. 5 (*Nasalga*) (plur. opn. of Werdegar, J.)). An *Estrada* issue is pending before the Supreme Court in *People v. DeHoyos* (2015) 238 Cal.App.4th 363, review granted September 30, 2015, S228230. That case “presents the following issue: Does the Safe Neighborhood and Schools Act [Proposition 47] (Gen. Elec. (Nov. 4, 2014)), which made specified crimes misdemeanors rather than felonies, apply retroactively to a defendant who was sentenced before the Act’s effective date but whose judgment was not final until after that date?” (<<http://www.courts.ca.gov/documents/JUN1016crimpend.pdf>>[as of June 17, 2016].)

On September 22, 2014, in case Nos. C1482231 and C1486379, petitioner was sentenced, apparently in accordance with a negotiated plea, to a five-year term in county jail pursuant to section 1170, subdivision (h). The five-year term consisted of a three-year term for violating section 530.5, subdivision (a) (unauthorized use of personal identifying information of another person)⁵ and two consecutive, one-year prior prison term enhancements (§ 667.5(b)). Execution of the two-year concluding portion of petitioner's five-year term was suspended and deemed a period of mandatory supervision.

The first prior prison term was based on petitioner's conviction under section 666 (petty theft with a prior). On April 21, 2015, the conviction was redesignated a misdemeanor under section 1170.18, subdivisions (f) and (g).

The second prior prison term was based on petitioner's conviction of section 496 (receiving stolen property). On April 21, 2015, the conviction was redesignated a misdemeanor under section 1170.18, subdivisions (f) and (g).

No appeal was taken from the judgment entered on September 22, 2014. At that time, the convictions underlying those prior prison terms were still felonies.

On June 5, 2015, petitioner filed a petition for writ of habeas corpus in Santa Clara County Superior Court. The Santa Clara County Superior Court denied the petition on July 22, 2015.

Petitioner has not filed any other request for relief in regard to the same assertedly illegal detention and restraint.

The return denies that petitioner's current confinement is illegal and that the "two prison priors are no longer valid prison priors following the redesignation of such offenses to misdemeanors pursuant to . . . section 1170.18(f), (g)." It denies that the superior court's ruling on petitioner's prior habeas petition was in error. The return further denies that petitioner's current sentence is now illegal because the prior prison

⁵ Concurrent three-year terms were imposed for 12 other violations of section 530.5, subdivision (a).

term enhancements are no longer valid. It repeatedly asserts that “the resignation of the offenses underlying petitioner’s prior prison term enhancements did not affect the validity of those enhancements.”

The return denies that petitioner is entitled to any relief. The return asserts that the People should have the opportunity to withdraw from their plea agreement with petitioner and proceed on the original charges against her if this court grants relief.

The traverse denies that petitioner’s current confinement and sentence is lawful, that the superior court’s ruling on her habeas petition was lawful, and that she is not entitled to any relief. The traverse repeatedly asserts that the “two prison priors” have been reclassified for all purposes under section 1170.18, subdivisions (f) and (g), and that therefore they cannot form the basis for her current confinement and sentence. The traverse states that the People should not have the opportunity to withdraw from the plea agreement with her and proceed on the original charges if this court grants relief because “a plea agreement incorporates and contemplates the reserve power of the state to modify the law for the public good without violating terms of a plea agreement.”

II

Discussion

A. Legal Background

1. Section 1170.18

Under section 1170.18, subdivision (a), a previously convicted person who is “currently serving a sentence” for a felony conviction but “who would have been guilty of a misdemeanor” if Proposition 47 had “been in effect at the time of the offense,” “may petition for a recall of sentence . . . to request resentencing in accordance with 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. A court that receives such a petition for recall of sentence must “determine whether the petitioner satisfies the criteria in subdivision (a)” of

section 1170.18. (§ 1170.18, subd. (b).) “If the petitioner satisfies the criteria in subdivision (a),” the court must recall “the petitioner’s felony sentence” and resentence the petitioner “to a misdemeanor pursuant to 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 amended or added by Proposition 47 “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18, subd. (b).)

Under section 1170.18, subdivision (f), a previously convicted person, who has completed a sentence for a felony conviction but “who would have been guilty of a misdemeanor” if Proposition 47 had “been in effect at the time of the offense,” “may file an application” to have any such felony convictions “designated as misdemeanors.” If the application satisfies such criteria, the court must “designate the felony offense or offenses as a misdemeanor.” (§ 1170.18, subd. (g).)

Neither of the foregoing remedial procedures is available to “persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.” (§ 1170.18, subd. (i).) The remedial procedures are available for only a limited time: “Any petition or application under this section shall be filed within three years after the effective date of the act that added this section or at a later date upon a showing of good cause.” (§ 1170.18, subd. (j).)

Subdivision (k) of section 1170.18 provides: “Any felony conviction that is recalled and resented under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.”

Even if a person is resentenced pursuant to subdivision (b) of section 1170.18, the person is “subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole.” (§ 1170.18, subd. (d).)

2. *One-Year Prior Prison Term Enhancement*

A prior prison term enhancement under section 667.5(b) may be imposed “where the new offense is any felony.” Historically, “[i]mposition of a sentence enhancement under . . . section 667.5 require[d] proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. (*People v. Elmore* (1990) 225 Cal.App.3d 953, 956-957.)” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.)

Section 667.5(b) has been amended to account for prison realignment and the fact that some felony sentences are now served in county jail under subdivision (h) of Section 1170.⁶ The basic requirements, however, are unchanged.

⁶ Section 667.5(b) now provides: “Except where subdivision (a) applies, 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 imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow mandatory supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.”

B. Analysis

Proposition 47 does not spell out the consequence, if any, with respect to a one-year prior prison term enhancement (§ 667.5(b)) that is part of a sentence currently being served if the conviction underlying the prior prison term is redesignated a misdemeanor “for all purposes” based upon an application for designation (§ 1170.18, subs. (f), (g), (k)). Petitioner maintains that, once such an enhancement loses its essential felonious character through mandatory redesignation of the underlying conviction to a misdemeanor “for all purposes” (§ 1170.18, subd. (k)), that conviction can no longer lawfully serve as the basis of any current sentence. She contends that the two one-year prior prison term enhancements included in her current sentence were imposed because the prior convictions were felony convictions and that this court must now strike those enhancements because they have lost their “essential felony character.”

The Attorney General asserts that the redesignation of a felony conviction as a misdemeanor under Proposition 47 does not affect the validity of a previously-imposed prior prison term enhancement because the purpose of such enhancements are to deter recidivists like petitioner, and such enhancements are not based on whether or not the convictions underlying those prison terms were felonies. The Attorney General further contends that the language of section 1170.18, subdivision (k), “shall be considered a misdemeanor for all purposes,” does not operate retroactively.⁷

⁷ *People v. Valenzuela* (2016) 244 Cal.App.4th 692 (*Valenzuela*), review granted on March 30, 2016 (S232900), one of the cases upon which the Attorney General seeks to rely, is no longer good law. (See Cal. Rules of Court, rules 8.1105(e)(1), 8.1115(a).) *Valenzuela* presents the following issue: “Is defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court had reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?” (<http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2135098&doc_no=S232900>[as of June 17, 2016].) Review has also been granted in related cases: *In re Larson*, review granted on April 20, 2016, S232839 (holding for lead case), *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted on April 27, 2016,

The critical statutory language at issue is the phrase “shall be considered a misdemeanor for all purposes.” (§ 1170.18, subd. (k).) “As in any case involving statutory interpretation, our fundamental task here is to determine the [legislative body’s] intent so as to effectuate the law’s purpose. [Citation.] We begin by examining the statute’s words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language ‘in isolation.’ [Citation.] Rather, we look to ‘the entire substance of the statute . . . in order to determine the scope and purpose of the provision [Citation.]’ [Citation.] That is, we construe the words in question ‘ “in context, keeping in mind the nature and obvious purpose of the statute” [Citation.]’ [Citation.] We must harmonize ‘the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.’ [Citations.]” (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

The flaw in petitioner’s argument is the presupposition that the redesignation of the convictions underlying her two prior prison term enhancements automatically invalidates those enhancements, which were valid when imposed, even though there is no explicit language in Proposition 47 so providing. As discussed, Proposition 47 created a specific procedure for persons who are currently serving a sentence for a felony that would have been a misdemeanor under Proposition 47, and it established criteria for

S233011 (same), *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted on May 11, 2016, S233201 (same), and *People v. Williams* (2016) 245 Cal.App.4th 458, review granted on May 11, 2016, S233539 (same). A separate, but somewhat analogous, issue is pending before the Supreme Court in *People v. Buycks* (2015) 241 Cal.App.4th 519, review granted on the court’s own motion on January 20, 2016, S231765. It presents the following issue regarding an on-bail enhancement: “Was defendant eligible for resentencing on the penalty enhancement for committing a new felony while released on bail on a [felony] drug offense even though the superior court had reclassified the conviction for the drug offense as a misdemeanor under the provisions of Proposition 47?”

(<http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2130360&doc_no=S231765>[as of June 17, 2016].)

resentencing and stated the effect of such resentencing. (§ 1170.18, subs. (a)-(d), (i)-(k).) Persons who have one or more convictions of certain serious and/or violent felonies or who are required to register as a sex offender are ineligible for resentencing. (§ 1170.18, subd. (i).) Persons whom the court, in its discretion, finds would pose an unreasonable risk of danger to public safety if resentenced are not entitled to resentencing. (§ 1170.18, subs. (b), (c).) Persons obtaining resentencing are still ordinarily subject to one year of parole and potential parole revocation terms (§ 1170.18, subd. (d)). Convictions resentenced as misdemeanors pursuant to a petition for recall are still regarded as felonies for purposes of “conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.”⁸ (§ 1170.18, subd. (k).) In addition, as indicated, the window of opportunity for convicted persons to take advantage of section 1170.18’s procedures is statutorily time-limited. (§ 1170.18, subd. (j).)

Read as a whole, section 1170.18 clearly indicates that the ameliorative provisions of Proposition 47 were not intended to result in the automatic, retroactive invalidation of any term that is part of a sentence imposed in a final judgment. The retroactive effect of the statutory changes reducing offenses to misdemeanors is carefully circumscribed by section 1170.18.

Nothing in the proposition’s uncodified provisions or the ballot materials suggest a different conclusion. Proposition 47 declares the purposes and intents of the people of the State of California in enacting the proposition. They include “[r]equir[ing] misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes” (Voter Guide, text of Prop. 47, § 3, subd. (3)), “[a]uthoriz[ing]

⁸ Section 29800, subdivision (a), provides in pertinent part: “Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country . . . and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.”

consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors” (*Id.*, § 3, subd. (4)), and “[r]equir[ing] a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety.” (*Id.*, § 3, subd. (5).) The declaration in no way suggests a legislative intent to automatically render invalid any part of a final sentence still being served.

Neither the “Official Title and Summary” regarding Proposition 47 prepared by the Attorney General nor the analysis of the proposition prepared by the Legislative Analyst suggests that any of its provisions would automatically render invalid any part of a final sentence still being served. That analysis of Proposition 47 set forth in the Voter Information Guide for the General Election of November 4, 2014 states: “This measure reduces penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. The measure also allows certain offenders who have been previously convicted of such crimes to apply for reduced sentences.” (Voter Guide, analysis of Prop. 47 by Legislative Analyst, p. 35.) It explains: “This measure allows offenders currently serving felony sentences for the above crimes to apply to have their felony sentences reduced to misdemeanor sentences. In addition, certain offenders who have already completed a sentence for a felony that the measure changes could apply to the court to have their felony conviction changed to a misdemeanor. However, no offender who has committed a specified severe crime could be resentenced or have their conviction changed. In addition, the measure states that a court is not required to resentence an offender currently serving a felony sentence if the court finds it likely that the offender will commit a specified severe crime. Offenders who are resentenced would be required to be on state parole for one year, unless the judge chooses to remove that requirement.” (*Id.*, p. 36.)

The arguments for and against the proposition and the rebuttals to those arguments also do not indicate that a final sentence being served will be automatically, retroactively

altered by any of the provisions of Proposition 47. The rebuttal to the argument against Proposition 47, which was contained in the Official Voter Information Guide, reassured the voters: “*Proposition 47 does not require automatic release of anyone. There is no automatic release. It includes strict protections to protect public safety and make sure rapists, murderers, molesters and the most dangerous criminals cannot benefit.*” (Voter Guide, rebuttal to argument against Prop. 47, p. 39.)

We find it significant that Proposition 47 does not provide any procedural mechanism allowing a person who is currently serving a sentence that includes a one-year prior prison term enhancement (§ 667.5(b)) to seek resentencing in order to have the enhancement stricken on the ground that the underlying felony conviction has been designated a misdemeanor pursuant to section 1170.18, subdivision (g).⁹ The drafters of the proposition could have easily added such a provision, but they did not. The omission may well have been intentional since “[t]he purpose of section 667.5 is to impose additional punishment upon a felon whose prior prison term failed to deter him or her from *future* criminal conduct.” (*People v. Medina* (1988) 206 Cal.App.3d 986, 991)

As we have indicated, the issue in this case boils down to the meaning and effect of the phrase “shall be considered a misdemeanor for all purposes” (§ 1170.18,

⁹ An altogether different situation exists if, prior to the effective date of Proposition 47, a defendant was convicted of only felonies, which were subsequently reclassified as misdemeanors under Proposition 47, and the defendant’s sentence included a one-year prior prison term enhancement. In that scenario, if the court resentences the defendant to only misdemeanors pursuant to a petition for recall of sentence (§ 1170.18, subds. (a), (b)), it would appear that the defendant would not be convicted of a new felony offense as required to impose a one-year prior prison term enhancement (§ 667.5(b)). A related issue arose in *People v. Abdallah* (2016) 246 Cal.App.4th 736 (*Abdallah*), which concluded that a one-year prior prison term enhancement could not be imposed in that case because, before sentencing in that case, a prior felony conviction had been reduced to “a misdemeanor for all purposes” when the defendant was resentenced in an earlier case (§ 1170.18, subds. (b), (k)), and, consequently, the defendant had remained free of both prison custody and the commission of a new offense that results in a felony conviction for five years (§ 667.5, subd (b)). (*Abdallah, supra*, 246 Cal.App.4th at p. 746.)

subd. (k).) A very similar phrase is found in section 17, subdivision (b), which states in part: “When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, *it is a misdemeanor for all purposes* under the following circumstances:” (Italics added.) “Where . . . legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the same construction, unless a contrary intent clearly appears. [Citations.]” (*Estate of Griswold* (2001) 25 Cal.4th 904, 915-916; see *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 359 [“Words with an accepted judicial interpretation should be given the same interpretation in statutes dealing with the same subject matter”].)

In *People v. Park* (2013) 56 Cal.4th 782 (*Park*), the California Supreme Court faced the question “whether a defendant adjudged guilty of a wobbler charged as a felony that is later reduced to a misdemeanor pursuant to section 17(b)(3) is nonetheless subject to a five-year enhancement under section 667(a) in a subsequent criminal proceeding.”¹⁰ (*Id.* at p. 795.) The court stated: “From the decisions addressing the effect and scope of section 17(b), we discern a long-held, uniform understanding that when a wobbler is reduced to a misdemeanor in accordance with the statutory procedures, the offense *thereafter* is deemed a ‘misdemeanor for all purposes,’ except when the Legislature has specifically directed otherwise.” (*Id.* at p. 795, italics added.) The court noted that

¹⁰ Section 17, subdivision (b), states in part: “When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] . . . [¶] (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.”

“[t]he language of section 17 added in 1874 . . . gave rise to the . . . rule that if the court exercised its discretion by imposing a sentence other than commitment to state prison, the defendant stood convicted of a misdemeanor, but only from that point forward; classification of the offense as a misdemeanor did not operate retroactively to the time of the crime’s commission, the charge, or the adjudication of guilt. (*Doble v. Superior Court* [(1925)] 197 Cal. [556,] 576-577 [the court’s reduction of a wobbler to a misdemeanor at sentencing had no retroactive effect on the statute of limitations applicable to that crime]; see *People v. Moomey* (2011) 194 Cal.App.4th 850, 856-858 [a wobbler offense committed by a principal is deemed a felony at the time of its commission for purposes of imposing criminal liability on an accessory to a felony after the fact, even if, subsequent to the accessory’s conviction, the principal’s offense is reduced to a misdemeanor].)” (*Id.* at p. 791, fn. 6.) In *Park*, the Supreme Court held that the “defendant’s earlier offense,” which had been reduced to a misdemeanor, “did not qualify as a prior serious felony for purposes of enhancement under section 667(a).” (*Id.* at p. 795.)

“Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of the judicial construction of the law that served as its source. [Citation.]” (*In re Harris* (1989) 49 Cal.3d 131, 136; see *People v. Weidert* (1985) 39 Cal.3d 836, 845-846.) The use of the “misdemeanor for all purposes” language in section 1170.18, subdivision (k), which is almost identical to the judicially construed language in section 17, subdivision (b), suggests that the drafters and the voters intended it to be similarly applied, in other words, applied prospectively.¹¹

¹¹ In resolving a question of appellate jurisdiction in *People v. Rivera* (2015) 233 Cal.App.4th 1085 (*Rivera*), this court considered the effect of the language “shall be considered a misdemeanor for all purposes” in section 1170.18, subdivision (k). (*Rivera, supra*, at p. 1089.) Based on the substantially similar language in section 17, subdivision (b), this court presumed that “the phrase ‘shall be considered a misdemeanor for all purposes’ in section 1170.18, subdivision (k) does not apply retroactively.” (*Rivera, supra*, at p. 1100.)

In arguing that the redesignation of a conviction as a misdemeanor under section 1170.18, subdivision (g), must be accorded automatic, retroactive effect such that a prior prison term enhancement (that is part of a sentence currently being served) is rendered invalid, petitioner attempts to distinguish section 1170.18 from section 17, subdivision (b). She emphasizes that such redesignation under section 1170.18, subdivision (g), is mandatory whereas a court’s reduction of a felony to a misdemeanor under section 17, subdivision (b), is discretionary. She contends that a conviction’s “redesignation to a misdemeanor for all purposes should not be reflexively given the same meaning as a reduction dependent upon judicial discretion” ”

We find petitioner’s arguments unavailing. Nothing in the provisions of Proposition 47 or in the ballot materials suggest that the “misdemeanor for all purposes” language in section 1170.18 is intended to give a misdemeanor designation automatic, retroactive effect such that a prior prison term enhancement previously imposed (when the underlying conviction was a felony) is rendered invalid and must be stricken. Prior prison term enhancements were not even mentioned in either the proposition or any of the ballot materials.

Whether and to what extent a statutory change must be given retroactive effect is generally a matter of ascertaining legislative intent. (*Brown, supra*, 54 Cal.4th at p. 319; *Nasalga, supra*, 12 Cal.4th at p. 792 (plur. opn. of Werdegar, J.)) [“To ascertain whether a statute should be applied retroactively, legislative intent is the ‘paramount’ consideration”]; see *People v. Davis* (2016) 246 Cal.App.4th 127, 136 [“When the Legislature—or, in this case, the electorate—has expressed its intent [as to retroactivity], that intent governs. [Citations.]”].) “When the Legislature has not made its intent on the matter [of retroactivity] clear with respect to a particular statute, the Legislature’s generally applicable declaration in section 3 provides the default rule: ‘No part of [the Penal Code] is retroactive, unless expressly so declared.’ We have described section 3, and its identical counterparts in other codes (e.g., Civ.Code, § 3; Code Civ. Proc., § 3), as

codifying ‘the time-honored 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 . . . must have intended a retroactive application.’ (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208-1209 (*Evangelatos*); see also *id.*, at p. 1208 [requiring ‘“express language or [a] clear and unavoidable implication [to] negative[] the presumption” ’].) In applying this principle, we have been cautious not to infer retroactive intent from vague phrases and broad, general language in statutes. (*Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 229-230; see *Evangelatos*, at p. 1209, fn. 13.) Consequently, ‘“a statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.” ’ (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841, quoting *INS v. St. Cyr* (2001) 533 U.S. 289, 320-321, fn. 45.)” (*Brown, supra*, 54 Cal.4th at pp. 319-320.)

The inclusion of section 1170.18 in Proposition 47 clearly demonstrates a legislative intent to give limited retroactive effect to the proposition’s ameliorative changes and to require persons who are still serving a sentence under a final judgement to secure the benefit of those changes, to the extent statutorily permitted, through the resentencing procedure established by that section. In the absence of any indication that the phrase “misdemeanor for all purposes” was intended to have automatic, retroactive effect, we conclude that the prior prison term enhancements imposed on petitioner when she was sentenced on September 22, 2014 were not rendered invalid by the subsequent redesignation of the underlying convictions as misdemeanors (§ 1170.18, subd. (g)). We discern no conflict between the aims of Proposition 47 and our conclusion.

Petitioner also points out that Proposition 47 states that “[t]his act shall be broadly construed to accomplish its purposes” (Voter Guide, text of Prop. 47, § 15) and provides that “[t]his act shall be liberally construed to effectuate its purposes” (*Id.*, § 18). Those provisions do not persuade us to reach a different conclusion since “legislative intent in

favor of the retrospective operation of a statute cannot be implied from the mere fact that the statute is remedial and subject to the rule of liberal construction.” (*Di Genova v. State Board of Education* (1962) 57 Cal.2d 167, 174, fn. omitted.)

“Once the electorate’s intent has been ascertained, the provisions must be construed to conform to that intent. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 979.) ‘[W]e may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less.’ (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)” (*Park, supra*, 56 Cal.4th at p. 796.) Accordingly, petitioner is not entitled to relief.¹²

DISPOSITION

The order to show cause is discharged, and the petition for writ of habeas corpus is denied.

¹² In light of our conclusion, we do not reach the issue whether the prosecution has the option of rescinding the negotiated plea and reinstating any charges that were dismissed pursuant to the plea in the event that the prior prison term enhancements were invalidated by the redesignation of the underlying convictions as misdemeanors. We note that the Supreme Court has granted review in several cases that present similar issues. *Harris v. Superior Court* (2015) 242 Cal.App.4th 244, review granted February 24, 2016, S231489, presents the following issues: “(1) Are the People entitled to withdraw from a plea agreement for conviction of a lesser offense and to reinstate any dismissed counts if the defendant files a petition for recall of sentence and reduction of the conviction to a misdemeanor under Proposition 47? (2) If the defendant seeks such relief, are the parties returned to the status quo with no limits on the sentence that can be imposed on the ground that the defendant has repudiated the plea agreement by doing so?”

(http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2129194&doc_no=S231489) [as of June 17, 2016].) Review has also been granted in *People v. Perry* (2016) 244 Cal.App.4th 1251, review granted April 27, 2016, S233287 (holding for lead case).

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.