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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES ROBERT ELKINS,

Defendant and Appellant.

H043211

(Santa Clara County

Super. Ct. No. 128292)

In 1989, defendant James Robert Elkins pleaded guilty to felony possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a).) The trial court suspended imposition of sentence and placed defendant on probation for three years. In 1991, the trial court granted defendant's petition for dismissal of the offense pursuant to Penal Code section 1203.4.<sup>1</sup>

In 2015, following the passage of Proposition 47, defendant filed a petition to have his conviction designated as a misdemeanor pursuant to section 1170.18, subdivision (f). The trial court denied the petition on the ground that it could not redesignate a conviction that had previously been dismissed. After the trial court denied defendant's motion for reconsideration of the petition, defendant filed a timely notice of appeal.

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

On appeal, defendant contends, and the Attorney General concedes, that the trial court erred in finding that his felony conviction was ineligible for relief on the ground that it had previously been dismissed pursuant to section 1203.4. He also argues that equal protection mandates that his conviction be designated a misdemeanor, because there is no rational basis for treating him differently from individuals who were ineligible for section 1203.4 relief.

As this court held in *People v. Tidwell* (2016) 246 Cal.App.4th 212 (*Tidwell*), the dismissal of a felony conviction pursuant to section 1203.4 does not preclude a trial court from granting an application pursuant to section 1170.18, subdivision (f). (*Tidwell*, at p. 220.) In *Tidwell*, this court noted that there are a number of limitations on the effect of a dismissal pursuant to section 1203.4. (*Tidwell*, at p. 217.) For instance, section 1203.4, subdivision (a)(1) provides that “in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved . . . .” (See *Tidwell*, at p. 217.) This court further noted that there was “no ambiguity in the language of section 1170.18 that allows a person ‘who has completed his or her sentence *for a conviction*, whether by trial *or plea*, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense,’ to apply to the trial court in order to have the felony conviction or convictions designated as misdemeanors. (§ 1170.18, subd. (f), italics added.)” (*Tidwell*, at p. 218.) This court found “[n]othing in the language of section 1170.18” to support a conclusion that a dismissal under section 1203.4 would preclude a court from redesignating a felony conviction, particularly since dismissal of a conviction under section 1203.4 does not eliminate the potential for “continuing or future consequences” of such a conviction. (*Tidwell*, at p. 219.)

Since the trial court erred when it denied defendant's petition for redesignation of his felony conviction, we will remand the matter for the trial court to determine the merits of the petition.<sup>2</sup>

The order denying defendant's petition for redesignation of his felony conviction as a misdemeanor pursuant to section 1170.18 is reversed. The matter is remanded for consideration of the merits of the petition.

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<sup>2</sup> Since we have concluded that *Tidwell, supra*, 246 Cal.App.4th 212 is controlling, we need not consider defendant's equal protection argument.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.

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