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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

TY MARK BROWN,

Defendant and Appellant.

H043422

(Santa Clara County

Super. Ct. No. 99576)

Defendant Ty Mark Brown appeals from an order denying his petition for resentencing under Penal Code section 1170.18.¹ Defendant contends—and the People concede—that the trial court erroneously believed that it had no authority to resentence defendant. We agree and reverse the order.

Background

In July 1985 defendant pleaded guilty to possession of cocaine, a violation of Health and Safety Code section 11350, subdivision (a). Imposition of sentence was suspended, and defendant was placed on formal probation for one year, conditioned on service of four months in county jail. In September 1986 the court granted defendant’s petition for “record clearance” pursuant to section 1203.4.

On November 10, 2015, defendant petitioned to have his felony conviction for possession designated a misdemeanor under the recently enacted section 1170.18, the resentencing provision of the “Safe Neighborhoods and Schools Act of 2014”

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

(Proposition 47). In a summary order, filed December 10, 2015, the trial court denied the petition, concluding that “there are no felony convictions because any conviction was expunged pursuant to [section] 1203.4. . . . [Section] 1170.18 makes no provision for misdemeanor treatment of felony convictions after those convictions have been set aside and the accusations dismissed.” Trial counsel’s motion for reconsideration was also denied, based on the trial court’s belief that “the actual charges are gone so I don’t think there’s anything to be reduced.”

Discussion

Both parties recognize *People v. Tidwell* (2016) 246 Cal.App.4th 212, where this court held that the grant of relief under section 1203.4 does not erase the conviction or eliminate the potential for “continuing or future consequences” of the conviction. (*Tidwell, supra*, at p. 219.) Accordingly, a dismissal, expungement, or “record clearance” does not preclude redesignation of a felony conviction as a misdemeanor under section 1170.18. (*Tidwell, supra*, at pp. 219-220.)

The People concede that the court was mistaken in its belief that it had no jurisdiction to consider defendant’s petition. We must therefore reverse the order to permit the court to address the merits of the petition.

Disposition

The order denying defendant’s petition for redesignation of his felony conviction under section 1170.18 is reversed, and the matter is remanded for consideration of the merits of the petition.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.