IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. LUIS DONICIO VALENZUELA, Defendant and Appellant.	S239122 Ct. App. 2/6 B269027 Ventura County Super. Ct. No. 2013025724

OPENING BRIEF ON THE MERITS

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Issue Presented

Does the reclassification of a felony conviction to a misdemeanor for all purposes pursuant to Proposition 47 preclude the use of that misdemeanor to satisfy the felony offense element of the crime of street terrorism?

Facts and Procedural History

In this case, appellant Luis Valenzuela stole a $200 bicycle from the person of the victim, Manuel Ramirez, and was convicted after trial of grand theft. (Count 1: Penal Code § 487, subd. (c).)[1] [2] In addition, an enhancement of having committed that crime for the benefit of a gang

[1] All further statutory references are to the Penal Code unless otherwise specified.

[2] Hereinafter for ease of reading, and brevity, 487(c).

was found true. (§ 186.22, subd. (b)(1).)[3] Valenzuela was also convicted of street terrorism in count two. (§ 186.22, subd. (a).)[4] The felony offense element for the street terrorism count was the grand theft conviction in count one. Valenzuela was sentenced to an aggregate term of nine years and eight months in prison. (*People v. Valenzuela* (2016) 55 Cal.App.5th 449, 451-452, review granted March 1, 2017.) (hereinafter, *Valenzuela* or opinion.)

After the passage of Proposition 47 (Safe Neighborhoods and Schools Act, hereinafter the Act), Valenzuela filed a petition requesting to be resentenced based on the new statutory terms set forth in Proposition 47. The trial court granted his request and reclassified count one a misdemeanor given that the value of the bicycle was less than $950. The trial court also declined to impose the section 186.22(b) gang enhancement attached to count one once the grand theft was reduced to a misdemeanor. However, the trial court eventually denied Valenzuela's motion to dismiss the street terrorism count, finding that the reclassification of his theft conviction to a misdemeanor did not undermine the street terrorism conviction. (*Ibid.*) Valenzuela was then resentenced on count two to seven years and eight months.[5]

Valenzuela filed a timely appeal. On November 14, 2016, the Court of Appeal issued an opinion certified for publication. The opinion concluded that there was no error in sentencing Valenzuela to the street terrorism count despite the reduction of the grand theft to a misdemeanor. The opinion relied on two theories. First, the opinion held that section 186.22(a)

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[3] Hereinafter for ease of reading, and brevity, 186.22(b).

[4] Hereinafter for ease of reading, and brevity, 186.22(a).

[5] The trial court reached seven years and eight months by imposing 32 months on count two – low term doubled because of a prior strike enhancement – plus five years for the section 667, subdivision (a), enhancement.

only requires the commission of felonious conduct rather than the conviction of a felony offense.

According to the opinion, that distinction led to this conclusion: "[b]ecause the focus is on the commission rather than the conviction of a felony, it is irrelevant that Valenzuela's theft conviction 'shall [now] be considered a misdemeanor for all purposes.'" (*Id.* at p. 452.)

Valenzuela filed a timely Petition for Review, and on March 1, 2017, this Court granted review.

Memorandum of Points and Authorities

I.

The reduction of the grand theft conviction to a misdemeanor prevented the court from thereafter relying on that conviction to satisfy the felony offense element for the street terrorism count.

The *Valenzuela* opinion concluded that the reduction of the theft conviction to a misdemeanor did not preclude the court from imposing a felony sentence on the street terrorism count. The court reasoned, in part, that the crime of street terrorism required only felonious conduct, not a felony conviction. That distinction, according to the court, distinguished this case from sentence enhancements which require a felony conviction. "The gravamen of the [street terrorism offense] is active participation in a criminal street gang. (*People v. Albillar* (2010) 51 Cal.4th 47, 55 (citations omitted).) To that end, it requires participation in the 'felonious criminal conduct' of at least one other gang member. (§ 186.22, subd. (a); *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1134 (citations omitted).) It does not require that anyone sustain a conviction for that conduct. Because the focus is on the commission rather than the conviction of a felony, it is irrelevant that Valenzuela's theft conviction 'shall [now] be considered a

misdemeanor for all purposes.' (§ 1170.18, subd. (k).)" (*Id.* at p. 452.)

The opinion's reliance on the distinction between felonious conduct and a felony conviction with respect to the necessary elements for a section 186.22(a) conviction is a distinction without meaning. The third element for an authorized sentence for section 186.22(a) requires that a defendant "willfully assisted, furthered, or promoted felonious criminal conduct by members of a gang either by: (a) directly and actively committing a felony offense; or (b) aiding and abetting a felony offense." (CALCRIM No. 1400, element No. 3, § 186.22, subd. (a).)[6] There has to be a finding beyond a reasonable doubt that defendant either committed or aided in the commission of a felony offense. (*Ibid.*) In addition to the statewide jury instructions, the Fifth Amendment's due process clause requires proof beyond a reasonable doubt of each element of a substantive offense. (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 277-288.)

Further, this Court has always held that the third element in section 186.22(a) is satisfied only by the finding beyond a reasonable doubt that a defendant committed a felony offense, not simply some abstract and vague criminal conduct that now constitutes a misdemeanor offense. In *People v. Rodriguez, supra,* 55 Cal.4th 1125, this Court addressed whether

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[6] CALCRIM No. 1400 provides that to prove the defendant is guilty of this crime [violation of Penal Code section186.22(a)], the People must prove:

1. The defendant actively participated in a criminal street gang;
2. When the defendant participated in the gang, [he] knew that members of the gang engage in or have engaged in a pattern of criminal gang activity; and
3. The defendant willfully assisted, furthered, or promoted felonious criminal conduct by members of the gang by: (a) directly and actively committing a felony offense; or (b) aiding and abetting a felony offense.

At least two gang members of that same gang must have participated in committing the felony offense. The defendant may count as one of those members if you find that the defendant was a member of the gang.

a gang member who commits a felony alone violates section 186.22(a). This Court reached its decision by interpreting the third element in section 186.22(a), specifically, the meaning of the phrase "who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished . . . ." (*Id.* at p. 1128.)

This Court concluded that constitutional due process concerns and the express statutory language of section 186.22(a) require that at least two gang members must have participated in committing the felony offense. "As such, with section 186.22(a), the Legislature sought to punish gang members who acted in concert with other gang members in committing a *felony* regardless of whether such felony was gang related." (*Id.* at p. 1138, italics added.) In other words, section 186.22(a) requires two or more gang members to commit a felony offense.

In the case at bar, the jury found Valenzuela guilty of grand theft, a felony, in count one. The jury then relied on count one to find that he had committed a felony offense, an essential element in count two. Although the term "conviction" has no fixed definition, it is commonly interpreted by courts that a factual finding of guilt by a jury constitutes a conviction. The ordinary legal meaning of "conviction" is a verdict of guilty or the confession of the defendant in open court, and not the sentence or judgment. (*People v. Banks* (1959) 53 Cal.2d 370, 390-391; *People v. Ward* (1901) 134 Cal. 301, 307-308, *Ex parte Brown* (1885) 68 Cal. 176, 179, 183; *In re Anderson* (1939) 34 Cal.App.2d 48, 50-51.) Indeed, it is settled that for purposes of a prior conviction statute, a conviction occurs at the time of entry of the guilty plea. (*People v. Balderas* (1985) 41 Cal.3d 144, 203; *Stephens v. Toomey* (1959) 51 Cal.2d 864, 869; *People v. Milosavljevic* (1997) 56 Cal.App.4th 811, 817.) "[W]hen guilt is established, either by plea or verdict, the defendant stands convicted and

thereafter has a prior conviction." (*People v. Williams* (1996) 49 Cal.App.4th 1632, 1638.)

Consequently, contrary to the reasoning in the opinion, the requirement that there must be a finding of guilt that a defendant had either committed or aided in the commission of a felony offense for a lawful section 186.22(a) sentence means, in effect, that a defendant must have sustained a conviction for that felony offense. The opinion is wrong to conclude otherwise.

Assuming, arguendo, that the commission of a felony offense is distinguishable from a felony conviction, the reclassified misdemeanor theft conviction still did not qualify as felonious criminal conduct according to this Court's decision in *People v. Lamas* (2007) 42 Cal.4th 516. In *Lamas,* this Court addressed the issue of whether a gang member who carries a loaded firearm in violation of section 12031, subdivision (a)(1), satisfies the felonious conduct requirement in section 186.22(a) in order to elevate an otherwise misdemeanor to a felony. If the answer was yes, then the gang member would be in violation of section 12031, subdivision (a)(2)(c), a felony.

This Court held that the answer was no. That is, carrying a loaded firearm was misdemeanor conduct and the fact that it was done by a gang member does not by itself constitute felonious criminal conduct in violation of section 186.22(a). (*Id.* at p. 524.) This Court held that both misdemeanor convictions and misdemeanor conduct do not constitute felonious criminal conduct. (*Ibid.*; see also *People v. Albillar, supra,* 51 Cal.4th at p. 55 ["The plain language of the statute thus targets felonious criminal conduct . . . ."].)

The statutory interpretation that "felonious criminal conduct" requires the commission of a felony offense has been the settled law since at least 1991 when a Court of Appeal decision unequivocally held that the

phrase "felonious criminal conduct" has to equate to the commission of an offense amounting to a felony.

> "If, however, it [felonious criminal conduct] contemplates something less than the commission of an offense amounting to a felony, it makes criminal the promotion, furtherance or assistance of conduct which is not itself criminal. Such a construction would impinge on protected conduct. Where a provision is of doubtful validity we must, if possible, impose on it a construction which eliminates doubts as to its constitutionality. (Citations omitted.) We therefore construe the provision to cover only conduct which is clearly felonious, i.e., conduct which amounts to the commission of an offense punishable by imprisonment in state prison." (*People v. Green* (1991) 227 Cal.App.3d 692, 704.)

In sum, once the theft conviction in count one was reduced to a misdemeanor pursuant to Proposition 47, Valenzuela had no longer committed a felony offense. The trial court was thereafter precluded from using the misdemeanor theft conduct to satisfy the third element requirement in section 186.22(a).

II.

The opinion erred by failing to take Valenzuela back to the time of the original sentence and resentence him with the Proposition 47 count, now a misdemeanor.

The opinion claimed that the trial court "did treat the resentencing as a plenary sentencing" and properly resentenced Valenzuela to a misdemeanor for the theft conviction in count one. (*Valenzuela, supra,* 5 Cal.App.5th at p. 452.) The opinion, however, then reasons that the reduction of the theft conviction has no bearing on the 186.22(a) offense because when Valenzuela engaged in the theft it was felonious criminal

conduct and the subsequent change in the law is irrelevant. (*Id.* at p. 453.) That conclusion is in error and is based on faulty logic.

First, as discussed *ante,* the felonious criminal conduct element in section 186.22(a) requires the commission of a felony offense, which was not met here once count one was reduced to a misdemeanor.

Additionally, the purpose of a Proposition 47 resentencing is to take the defendant back to the original sentencing and sentence the defendant with the Proposition 47 count now a misdemeanor. Section 1170.18, subdivision (a), provides in pertinent part: "[a] person currently serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section . . . had this act been in effect *at the time of the offense* may petition for a recall of the sentence . . . ." (Italics added.)

The plain language of section 1170.18, subdivision (a), and the purpose of the Act, requires the court at a resentencing to take the defendant back to the time of the original sentence and resentence him with a Proposition 47 count as a misdemeanor. The court's role "is to ascertain the Legislature's [Electorate's] intent so as to effectuate the purpose of the law. [The court's] first task is to examine the language of the statute enacted as an initiative, giving the words their usual, ordinary meaning. . . . If the language is clear and unambiguous, [the court] follow[s] the plain meaning of the measure . . . . [T]he 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a measure comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute." [quotation marks omitted.] (*People v. Canty* (2004) 32 Cal.App.4th 1266, 1276 (quoting *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.)

In this case, section 1170.18, subdivision (a), entitles Valenzuela to be resentenced on his felony counts that would have been

misdemeanors had the Act been in effect at the time of the offense. The Act explicitly provides for retroactive relief for people either currently serving a sentence or for those who have completed a sentence. At Valenzuela's resentencing, the court must resentence him to those counts affected by the Act as if they were a misdemeanor "at the time of the offense." (§ 1170.18, subd. (a).) Once count one was reduced to a misdemeanor, the trial court could no longer treat that conduct as felonious. The opinion erred by using the conduct of count one as a felony for the sole purpose of sentencing Valenzuela to a felony term on count two.

A recent appellate decision concurred with Valenzuela's interpretation of a resentencing pursuant to section 1170.18, subdivision (a). In *People v. Rouse* (2016) 245 Cal.App.4th 292, the court explained its position on a resentencing. "In our view, a resentencing hearing on a petition under section 1170.18, subdivision (a), . . . envisions, at least where multiple counts are at issue, as is the case here, that resentencing will occur anew . . . . 'The purpose of section 1170.18 is to take the defendant back to the time of the original sentence and resentence him with the Proposition 47 count now a misdemeanor.'" (*Id.,* at pp. 299-300; see also Couzens & Bigelow, *Proposition 47: The Safe Neighborhoods and Schools Act,* (Barrister Press, May 16, 2016), at p. 62.) [As of March 27, 2017.]

The opinion's glaring error is evident in the statement, "[w]hen Valenzuela stole the bicycle, he engaged in felonious criminal conduct." (*Valenzuela, supra,* 5 Cal.App.5th at p. 453.) Not true. After Proposition 47, when Valenzuela stole the bicycle of a value less than $950, he engaged in *misdemeanor* conduct and committed a misdemeanor offense. Moreover, the only issue at the resentencing for count two was whether he committed a felony offense. After count one was reduced to a misdemeanor, he did not. Thus, Valenzuela cannot be sentenced to a felony sentence on count two solely because at the time of the offense, the

conduct could be charged as a felony. "Proposition 47 precludes the court from using that conviction as a felony merely because it was a felony at the time the defendant committed the offense." (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 747 (*Abdallah*).)

The opinion erred by conflating prospective application of Proposition 47 with retroactive application. At the resentencing on count two, count one was a misdemeanor. Therefore, any subsequent use of the now misdemeanor would be prospective application only.

A recent case that explained this distinction with respect to Proposition 47 and prison priors is *People v. Kindall* (2016) 6 Cal.App.5th 1199 (*Kindall*). Kindall was convicted of felony battery causing serious bodily injury. Attached to the felony battery were seven prison priors. Prior to the court trial on the prison priors, three of the prison priors were reclassified to misdemeanors pursuant to Proposition 47. At sentencing, the trial court imposed the reclassified misdemeanors as prison priors. In reversing the imposition of the prison priors, the appellate court stated:

> "Here, at the time the trial court was called upon (in the court trial on the priors) to find the elements of the enhancement, it could no longer properly find that defendant has sustained the prior felony convictions alleged. Instead, the three reduced felonies were misdemeanors for all purposes. Simply put, at the time of the charged priors' adjudication, defendant had sustained misdemeanor convictions for the three drug charges at issue rather than felonies. There was no need to 'look back' and read any retrospective effect into the Proposition 47 reductions . . . ." (*Id.* at p. 1204.)

Likewise, at the time of the resentencing on count two, Valenzuela had sustained a misdemeanor theft conviction on count one. There was no need to look back and apply any retrospective effect into the

Proposition 47 reduction.

Another appellate case has determined that as long as the Proposition 47 reduction takes place prior to the sentencing, the sentencing court is precluded from using that reduction thereafter as a felony. In *People v. Call* (March 14, 2017) __Cal.App.5th __, 2017 Cal.App. LEXIS 229 (*Call*), the prison prior convictions had been reduced to a misdemeanor prior to sentencing but after adjudication. The court held as long as the reductions were granted prior to sentencing, they could not thereafter be used as a prison prior enhancement. "Because the underlying convictions were reduced prior to sentencing on defendant's current offenses, however, the requisite prior felony conviction no longer existed at the time of sentencing, and so imposition of the enhancements was error." (*Id.* LEXIS at p. 9.)

In the same manner that a Proposition 47 reduction removed an essential element for a prison prior enhancement, the reduction in count one removed an essential element for section 186.22(a), i.e., that Valenzuela had committed a felony offense.

Valenzuela contends that a Proposition 47 resentencing is very similar, if not identical, to the factual scenario where the underlying felony offense on a 186.22(a) conviction is reversed on appeal. (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410.) In *Sifuentes,* a jury found defendant guilty of possession of a firearm by a felon with a gang enhancement. In addition, defendant Sifuentes was found guilty of the substantive felony gang count pursuant to section 186.22(a) based on the commission of the firearm possession offense. On appeal, his felony firearm conviction was reversed for insufficient evidence. Accordingly, the court then reversed both the gang enhancement attached to the firearm offense and the section 186.22(a) count:

> "Because the gang enhancement under section 186.22, subdivision (b), attached solely to the gun possession charge, we must reverse [the enhancement]. And we must also reverse [the 186.22(a) conviction] for active gang participation, which requires proof, among other elements, that the person 'willfully promoted, furthered or assisted in any felonious criminal conduct by members of the gang.' [Citation.] *To prove this element, the prosecutor relied on [Defendant's] alleged [felony] firearm possession.* Consequently, reversal of Sifuentes's gun possession conviction also requires reversal of [the] active gang participation conviction." (*Sifuentes, supra,* at pp. 1419-1420.) (Emphasis added.)

In the same manner that a reversal on appeal of the underlying felony count requires a dismissal of the street terrorism conviction, the reduction of the underlying felony to a misdemeanor requires the same result. Thus, consistent with the language and purpose of the Act, a theft of a $200 bicycle cannot be used to satisfy the third element of section 186.22(a). Further, Valenzuela contends that *Abdallah, Kindall, Call*, and *Sifuentes* are correctly decided and the Court of Appeal opinion here is in error.

III.

Section 1170.18, subdivision (k), requires a trial court to treat a felony reduced to a misdemeanor as a misdemeanor at a Proposition 47 resentencing.

The resentencing in count two in this case ran afoul of section 1170.18, subdivision (k), of the Act.[7] Section 1170.18(k) commands that a felony reduced to a misdemeanor under the Act "shall be considered a

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[7] Hereinafter for ease of reading, and brevity, 1170.18(k).

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. . . ."

The statutory interpretation that the reduction of count one prevented its subsequent use as a felony offense is consistent with the statutory canon "*expressio unius est exclusio alterius*" – inclusion of one thing implies the exclusion of the other. (*In re J.W.* (2002) 29 Cal.4th 200, 209.) The fact that the electorate specified that a misdemeanor under section 1170.18(k) shall be a misdemeanor for all purposes except for guns, means such conviction cannot be used as an underlying felony offense for section 186.22(a). "The plain language of section 1170.18, subdivision (k), reflects the voters' intent that the redesignated misdemeanor offense should be treated exactly like any other misdemeanor offense, except for firearm restrictions. Because the statute explicitly addresses what, if any, exceptions should be afforded to the otherwise all-encompassing misdemeanor treatment of the offense, and because only the firearm restriction was included as an exception, the enactors effectively directed the courts to not carve out other exceptions to the misdemeanor treatment of the reclassified offense absent some reasoned statutory or constitutional basis for doing so." (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1227; see also *People v. Cardenas* (1982) 31 Cal.3d 897, 914 ["[W]hen a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded."].)

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Valenzuela's position is also consistent with the majority of cases that have addressed this issue.[8] In *Abdallah,* the issue was whether a one-year prison prior enhancement conviction that was subsequently reduced to a misdemeanor pursuant to Proposition 47 could thereafter continue to be used as a prison prior enhancement. *Abdallah* held that section 1170.18(k) precluded its use as a prior felony conviction for the purpose of a prison prior enhancement, stating:

> "Proposition 47 borrowed the 'for all purposes' language of section 1170.18, subdivision (k), from section 17, subdivision (b), which describes the effect of a judicial declaration that a wobbler offense is a misdemeanor. (See § 17, subd. (b) [where a crime is a wobbler, "it is a misdemeanor for all purposes . . . [w]hen . . . the court declares the offense to be a misdemeanor"]; [citations omitted.] In general, 'identical language appearing in separate statutory provision should receive the same interpretation when the statutes cover the same or analogous subject matter.' [Citations omitted.] Because section 1170.18, subdivision (k), and section 17 both address the effect of recalling and resentencing of a felony (or a wobbler that could be a felony) as a misdemeanor, we construe the phrase 'misdemeanor for all purposes' in section 1170.18, subdivision (k), to mean the same as it does in section 17. [Citations omitted.]" (*Abdallah, supra,* 246 Cal.App.4th at p. 745.)

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[8] Appellant's issue on review is related to some extent to the issue on review in *People v. Valenzuela,* S232900, review granted on March 30, 2016: "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 provision of Proposition 47." Review has also been granted in similar cases: *In re Larson,* S232839, *People v. Carrea,* S233011, *People v. Ruff,* S233201, and *People v. Williams,* S233539, *People v. Acosta*, S235773. These cases are all on hold for the lead case in *Valenzuela* (S232900).

The *Abdallah* court next reasoned that a felony reduced to a misdemeanor under either section 17, subdivision (b), or Proposition 47, precludes its use as a prior felony conviction in order to enhance defendant's sentence.

> "The same logic applies to section 667.5, subdivision (b), and 1170.18, subdivision (k). Section 667.5, subdivision (b), excludes from the prior prison term enhancement a defendant who has neither committed 'an offense which results in a felony conviction' nor been subject to 'prison custody or the imposition of a term of jail custody . . . or any felony conviction resulting in the defendant's incarceration. Once the trial court recalled Abdallah's 2011 felony sentence and resentenced him to a misdemeanor, section 1170.18, subdivision (k), reclassified that conviction as a misdemeanor 'for all purposes'. [Citations omitted.] Therefore, at the time of sentencing in this case, Abdallah was not a person who had committed 'an offense which result[ed] in a felony conviction' within five years after his release on parole for his prior conviction." (*Id.* at p. 746; see also *Kindall, supra,* 6 Cal.App.5th 1199, 1204; *People v. Call, supra,* 2017 Cal.App. LEXIS 229; *People v. Evans* (2016) 6 Cal.App.5th 894, 902, review granted Feb. 22, 2017, S239635.)

Under the same analysis used in *Abdallah,* after the trial court granted the petition for resentencing for count one pursuant to section 1170.18, subdivision (a), the theft conduct could no longer be used to satisfy the commission of a felony offense requirement for section 186.22(a). Section 1170.18(k) required the trial court to treat the theft conviction as misdemeanor, which necessarily included the conduct underlying the conviction. "All" means all. (*Rubin v. Western Mutual Ins. Co.* (1999) 71 Cal.App.4th 1539, 1547.) "Section 1170.18(k)'s 'for all

purposes' language is broad, indicating the voters intended it to apply to all collateral consequences except firearm possession." (*People v. Evans* (2016) 6 Cal.App.5th 894, review granted Feb. 22, 2017, S239635.) "Like the Cheshire Cat, the felony count disappeared from sight, leaving nothing behind but a mischievous grin." (*In re Ramey* (1999) 70 Cal.App.4th 508, 512.)

Valenzuela's statutory interpretation of section 1170.18(k) is also consistent with this Court's interpretation of convictions reduced to misdemeanors under section 17, subdivision (b). (*People v. Park* (2013) 56 Cal.4th 782 (*Park*).) In *Park,* this Court held that a felony reduced to a misdemeanor cannot thereafter be used to enhance a sentence unless the Legislature has made it explicitly clear to treat the misdemeanor as a felony for specific purposes. In that case, the defendant had his felony assault with a deadly weapon charge reduced to a misdemeanor pursuant to section 17, subdivision (b)(3). It was then dismissed altogether under section 1203.4, subdivision (a)(1). (*Id.* at p. 787.) The following year, defendant was convicted of attempted voluntary manslaughter, and the trial court imposed a five year enhancement under section 667, subdivision (a) for the assault conviction even though it had been reduced to a misdemeanor.

In holding that the enhancement was invalid due to the fact that it had been reduced to a misdemeanor, this Court emphasized that "neither the language nor history of section 667, subdivision (a), or of the constitutional amendment that was enacted concurrently with that statutory provision, discloses an intent on the part of lawmakers to limit the effect of a court's exercise of discretion pursuant to 17, subdivision (b)." (*Id.* at p. 795; see also *People v. Culbert* (2013) 218 Cal.App.4th 184, 193-194 [a felony conviction reduced to a misdemeanor could not subsequently be used as either a section 667, subdivision (a), enhancement, or a felon in possession of a firearm offense].)

Here, the Act failed to disclose an intent to limit the effect of convictions reduced to misdemeanors. Rather, section 1170.18(k) requires that a conviction reclassified to a misdemeanor under section 1170.18, subdivision (a), "shall be considered a misdemeanor for all purposes."

Such a limitation on the trial court's use of a Proposition 47-reclassified misdemeanor is also consistent with how our courts have treated convictions reduced to misdemeanors by a change in the law. In *People v. Flores* (1979) 92 Cal.App.3d 461 (*Flores*), the defendant was sentenced to prison following his conviction of selling heroin, and his sentence was enhanced by one year pursuant to section 667.5, subdivision (b). The basis for the enhancement was defendant's prior prison term for a felony conviction of possession of marijuana. Subsequent to the marijuana conviction, the legislature changed the law and made simple possession of marijuana a misdemeanor. (*Id.* at p. 471.) The Legislature also specified that previous felony convictions should not be considered for any purpose. (*Id.* at p. 472.)

The *Flores* court thus held that defendant's marijuana conviction could not be used as a prison prior enhancement. The court reasoned that "[i]n view of the express language of the statute and the obvious legislative purpose, it would be unreasonable to hold that the Legislature intended that one who had already served a felony sentence for possession of marijuana should be subjected to the additional criminal sanction of a sentence enhancement." (*Id.* at p. 473.)

The same reasoning in *Flores* applies here. By enacting Proposition 47, the voters expressed the clear intent that defendants convicted of certain nonserious and nonviolent theft and drug offenses were subjected to disproportionately severe sanctions. "One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders in state prison, thereby saving money and focusing prison on offenders considered