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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD DAVE RENTERIA,

Defendant and Appellant.

In re

RONALD DAVE RENTERIA

on Habeas Corpus.

B281971

(Los Angeles County
Super. Ct. No. KA500014)

B285585

APPEAL from orders of the Superior Court of Los Angeles County, Wade D. Olson, Judge. Affirmed; petition denied.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Margaret E. Maxwell and Peggy Z. Huang,
Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

In a prior appeal, we affirmed the denial of defendant Ronald Dave Renteria's form petition requesting reclassification of his felony second degree burglary conviction as a misdemeanor pursuant to Penal Code sections 459.5, subdivision (a) and 1170.18, subdivisions (a) and (f),¹ added by voters in the General Election in November 2014 as part of Proposition 47 (The Safe Neighborhoods and Schools Act). We did so without prejudice to defendant filing a new petition supported by evidence demonstrating the value of the property taken during the burglary. He filed a new petition, which the trial court denied. We affirm.

Defendant has also filed a petition for writ of habeas corpus raising the same issues. We deny the petition.

BACKGROUND

We take the facts from our prior nonpublished opinion. (*People v. Renteria* (Nov. 9, 2016, B270081).) In 1992, defendant was charged with one count of second degree burglary (§ 459) and one count of hit and run causing injury (§ 20001, subd. (a)) with two prison priors. He pled guilty in 1994 and the court sentenced him to two years in state prison and struck the priors. According to the probation report prepared for his sentencing, he and four others burglarized a furniture store during the 1992 Los Angeles riots. After they loaded furniture onto the back of defendant's truck, he sped away. He was involved in a traffic collision and

¹ All undesignated statutory citations are to the Penal Code.

fled the scene. Ten people were seriously injured. The probation report indicated a spokesperson for the furniture store stated the “damages and loss of property to the store” amounted to approximately \$4,877. Based on this record, we affirmed the denial of defendant’s first petition without prejudice to him filing a new petition supported by evidence.

Defendant filed the petition at issue here on March 1, 2017, supported by seven exhibits: (1) the reporter’s transcript of his guilty plea; (2) a certificate and order of his guilty plea; (3) the abstract of judgment of his conviction; (4) the reporter’s transcript of his sentencing hearing; (5) the police report for the burglary; (6) a declaration dated January 31, 2017, from a coparticipant in the burglary; and (7) defendant’s own declaration dated February 13, 2017.

The trial court held a hearing and denied the petition. It explained, “This was a matter in which a furniture store was broken into and furniture taken. And then defendant fleeing with co-defendants in the automobile. The truck. Had a collision. Approximately ten people injured. Some seriously. [¶] The loss just for the property was \$4,877. So, does not apply as to count 1.” Defendant’s counsel asked, “If I may inquire, Your Honor. You say the loss of the property. I’m assuming the furniture that was removed and damaged?” The court responded, “Right.” It added, “So, count 1 is denied. It’s over \$950. Plus it was a commercial burglary at night.”

This appeal followed.

On October 11, 2017, defendant filed a petition for writ of habeas corpus (case No. B285585) raising the same issues. On October 24, we issued an order considering his habeas petition with this appeal.

We affirm the appeal and deny the petition for habeas corpus.

DISCUSSION

Under section 1170.18, “a person currently serving a felony sentence for an offense made a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies section 1170.18’s criteria shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (*Id.*, subd. (d).)” (*People v. Liu* (2018) 21 Cal.App.5th 143, 148.)

Proposition 47 added section 459.5, which designates certain burglaries as misdemeanor “shoplifting,” defined in pertinent part as “entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary.” (§ 459.5, subd. (a); see *People v. Gonzales* (2017) 2 Cal.5th 858, 863.)

The petitioner bears the burden of proving that he or she is eligible for Proposition 47 relief. (*People v. Romanowski* (2017) 2 Cal.5th 903, 916.) “With respect to a theft-related offense, this includes showing that the value of the relevant property was \$950 or less. [Citations.] Simply alleging that the petition ‘believes’ the property was worth \$950 or less is not enough, even if the petition is under penalty of perjury.” (*People v. Sweeney* (2016) 4 Cal.App.5th 295, 302.) Instead, a petitioner must

“ ‘indicate . . . the factual basis of his claim regarding the value of the stolen property.’ ” (*Ibid.*) “[A]n evidentiary hearing may be ‘required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner’s entitlement to relief depends on the resolution of an issue of fact.’ ” (*Romanowski, supra*, at p. 916.)

Defendant has not carried his burden to show he is entitled to resentencing. (*Romanowski, supra*, 2 Cal.5th at p. 916.) He incorrectly argues that the trial court’s valuation of the stolen property improperly included damage to the furniture store. At the hearing on the petition, however, the trial court confirmed the valuation was based on the stolen furniture. When defendant’s counsel asked if the amount found by the court was for “the furniture that was removed and damaged,” the court responded, “Right,” and denied the petition because “[i]t’s over \$950.”

Defendant claims his petition “included sworn declarations that the stolen furniture was not worth more than \$950.” But neither his nor his coparticipant’s declaration described the nature of the property taken. The coparticipant stated: “I have a vague recollection of identity or of any actual property stolen, but I believe individually held responsible for sole actions of any stolen property fall’s short of \$950.00 or exceeded \$950.00.” (*Sic.*) Defendant stated: “I, have no recollection, nor can I identity any actual property stolen. But it’s my belief the property loss fall’s

short of \$950. [¶] When individually held responsible for sole actions of any stolen property, it doesn't exceed \$950.”² (*Sic.*)

Defendant also failed to demonstrate that the furniture store was “open during regular business hours” when the burglary occurred. The trial court noted the burglary occurred “at night,” implying the store was closed. In a police report, coparticipants described “breaking out the windows” and “knocking out the windows with a baseball bat” in order to remove a “couch and some lamps,” which indicates the store was closed during the riots. This record amply supported the trial court’s denial of defendant’s petition on this independent ground.

DISPOSITION

The order denying defendant’s petition is affirmed. Defendant’s petition for writ of habeas corpus is denied.

ROGAN, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

² In the trial court and in his petition for writ of habeas corpus, defendant argued he could not be held responsible for the full value of the stolen property because he was only one of eight participants in the burglary and assisted only as the getaway driver. He has cited no legal support for this argument, so we reject it.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.