Filed 12/4/17 P. v. Thompson CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BOBBY LEE THOMPSON, Defendant and Appellant.	B270129 (Los Angeles County Super. Ct. Nos. A643627, TA024834)

APPEAL from an order of the Superior Court of Los Angeles County, Hector E. Gutierrez, Judge. Affirmed.

Tanya Dellaca, 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, Mary Sanchez and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

In 1987 and again in 1993, defendant and appellant Bobby Lee Thompson pleaded guilty to a felony count of receiving stolen property. (Pen. Code § 496, former subd. (1)[1]; § 496, subd. (a).) After Proposition 47 passed, Thompson—claiming that the stolen property in each case was worth less than $950—filed applications with the trial court to reclassify his felonies as misdemeanors. Thompson contends that the trial court erred by denying his reclassification applications. We reject this contention and affirm. Nevertheless, because it was not clear at the time Thompson filed his applications that he bore the burden of showing that the value of the stolen property was less than $950, we conclude that Thompson may file new applications with evidence of the value of the stolen property.

STATEMENT OF FACTS

On September 4, 1987, Thompson pleaded guilty to receiving stolen property. (§ 496, former subd. (1).) The property in question was a 1981 Datsun pickup truck. On June 17, 1993, Thompson again pleaded guilty to receiving stolen property. (§ 496, subd. (a).) This time the stolen property was a 1982 Oldsmobile Cutlass.

In November of 2014, California voters passed Proposition 47, which allows some felony convictions to be reclassified as misdemeanors. (§ 1170.18.) Convictions for receiving stolen property worth less than $950 are eligible for such a reclassification. (§ 1170.18, subd. (a); § 496, subd. (a).)

On June 17, 2015, Thompson filed two form applications to reclassify his 1987 and 1993 felony convictions as

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

misdemeanors.[2] On the 1987 application, Thompson wrote the correct case number, but he incorrectly stated that his 1987 conviction occurred more than one year later, on October 18, 1988. Thompson wrote the correct case identifier and conviction date on his 1993 application. On both applications, he checked boxes to indicate that the value of the property in question was less than $950.

On June 17, 2015, the trial court denied the applications. In its orders, the trial court marked boxes on the forms indicating that Thompson and the district attorney waived hearings and that the value of the property in question exceeded $950. On June 13, 2016, we granted Thompson's motion to settle the record in order to establish the basis on which the trial court denied Thompson's reclassification applications. The trial court held the record settlement hearing for the 1993 conviction in July of 2016. The prosecutor stated that, according to the police report in the case, "the item that was stolen and received by this defendant was a 1982 Oldsmobile Cutlass with an estimated value at the time of $3,000." The court acknowledged that when it issued its orders denying the applications, it "inadvertently checked 'Both parties waived a hearing' when it should have checked 'Neither party requested a hearing.' "

Two months later, the court held a record settlement hearing for Thompson's 1987 reclassification application. On his application, Thompson incorrectly stated that his conviction took

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[2] Thompson appears to have filed two applications for each reclassification. The trial court only responded to the resubmitted applications filed on June 17, 2015, and they are substantially similar to the original applications. Thompson only appeals the decisions on the June 17 applications.

place in 1988 rather than 1987. In fact, Thompson had been arrested on October 1, 1988, for robbery of a 1983 Ford Mustang, an incident completely separate from the offenses for which Thompson sought reclassification in his applications.[3]

The court and the prosecutor did not notice the mistake and, throughout the proceeding, referred to the conviction by the incorrect date. The prosecutor cited evidence pertaining to Thompson's 1988 arrest, not his 1987 conviction, identifying the property as "a 1983 Ford two door Mustang." The prosecutor stated that the "main reason for the opposition" to Thompson's application was that the "estimated value of the motor vehicle at that point . . . was $10,000." The court admitted the police report from the 1988 arrest into the record. The hearing and its incorporated evidence make no mention of Thompson's 1987 conviction, the actual subject of the reclassification application.

DISCUSSION

Thompson contends that the trial court erred in denying his Proposition 47 applications to reclassify his 1987 and 1993 convictions to misdemeanors. We affirm the denial of both reclassification applications, but our decision does not preclude Thompson from filing new reclassification applications with evidence regarding the value of the stolen property. "We review '[the trial] court's legal conclusions de novo and its findings of fact for substantial evidence." (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136 (*Perkins*).)

The passage of Proposition 47 created section 1170.18, which provides: "A person who has completed his or her sentence

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[3] There is no indication in the record as to whether Thompson was convicted of the 1988 offense.

for a conviction . . . 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, may file an application before the trial court . . . to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).) Proposition 47 also amended section 496 to define the receipt of stolen property, where the value of the stolen property does not exceed $950, as a misdemeanor. (§ 496, subd. (a).)

When filing a petition to reclassify a sentence to a misdemeanor, "[t]he ultimate burden of proving section 1170.18 eligibility lies with the petitioner." (*People v. Romanowski* (2017) 2 Cal.5th 903, 916.) The court in *People v. Sherow* (2015) 239 Cal.App.4th 875 (*Sherow*) explained how an applicant could meet this burden: "A proper petition could certainly contain at least [the petitioner's] testimony about the nature of the items taken. If he made the initial showing the court can take such action as appropriate to grant the petition or permit further factual determination." (*Id.* at p. 880.) Merely submitting an application form claiming that the value of the property was less than $950, without an explanation of the factual basis of the claim, is insufficient. (*Ibid.*; *Perkins*, *supra*, 244 Cal.App.4th at p. 137.)

Thompson did not meet his burden with respect to either application. For each reclassification application, Thompson submitted a form that merely asserted he was convicted for receipt of stolen property and that the value of the property did not exceed $950. He did not identify or describe the 1981 Datsun pick-up truck or the 1983 Oldsmobile Cutlass, and he provided no information on the nature or the value of the stolen property. For this reason, the court's error in relying on the prosecutor's inaccurate information regarding the value of the stolen property

was harmless. It is true that the prosecutor cited information pertaining to Thompson's 1988 arrest as evidence that the property in the 1987 conviction was worth more than $950. But it was Thompson's burden, not the prosecutor's, to establish the value of the stolen property. This is not a case where "the uncontested information in the petition and record of conviction [is] enough for the petitioner to establish . . . eligibility." (*People v. Romanowski*, *supra*, 2 Cal.5th 903, 916.)

We reject Thompson's argument that "the court impliedly found that [Thompson] made a prima facie case by asking the prosecution to respond to his petition." There is no indication in the record that the trial court made any findings or even considered Thompson's petition before the district attorney's office filed its response. Furthermore, contrary to Thompson's assertion that "the trial court already held an evidentiary hearing," the only hearings in this case were the record settlement hearings, at which the court affirmed that it did not hold an evidentiary hearing because neither party requested one. Although the trial court would have acted within its discretion if it had ordered evidentiary hearings in the case (see *People v. Huerta* (2016) 3 Cal.App.5th 539, 543), the court did not err by electing not to hold a hearing. (See § 1170.18, subd. (h) ["Unless the applicant requests a hearing, a hearing is not necessary to grant or deny an application."])

Like the court in *Perkins*, we recognize that the defendant "may have been misled about the requirements of petitioning for relief under Proposition 47. . . . Proposition 47 is silent as to the submission of evidence or information to support an application for resentencing. In addition, the form defendant used to petition includes no space for and no directions to include evidence or

information regarding the value of stolen property." (*Perkins, supra*, 244 Cal.App.4th at pp. 139–140.) Furthermore, Thompson submitted his applications in July of 2015, before any cases clarified that the petitioner bears the burden of establishing the value of the stolen property. Therefore, we follow the courts in *Perkins* and *Sherow* and affirm the denial of Thompson's application for reclassification " 'without prejudice to subsequent consideration of a properly filed petition.' " (*Id.* at p. 140, quoting *Sherow, supra*, 239 Cal.App.4th at p. 881.)

Thompson is entitled to file new applications with sufficient evidence to carry his burden with respect to the valuation of the stolen property. "In any new petition, defendant should describe the stolen property and attach some evidence, whether a declaration, court documents, record citations, or other probative evidence showing he is eligible for relief." (*Perkins*, *supra*, 244 Cal.App.4th at p. 140.)

DISPOSITION

The order of the trial court is affirmed without prejudice to Appellant filing a new petition.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.