Filed 9/28/17 P. v. Castillo CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JOHN ROBERT CASTILLO, Defendant and Appellant.	B278246 (Los Angeles County Super. Ct. No. BA296707)

APPEAL from an order of the Superior Court of Los Angeles County. David M. Horwitz, Judge. Reversed and remanded.

Thomas K. Macomber, 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, Senior Assistant Attorney General, Mary Sanchez and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant John Robert Castillo appeals from an order denying his petition to reclassify his felony conviction for receiving stolen property as a misdemeanor, as allowed in Penal Code section 1170.18, subdivision (f), which was enacted as part of Proposition 47.[1] As relevant here, Proposition 47 allows a defendant who has completed his or her sentence for a felony violation of section 496, subdivision (a) (receiving stolen property), and has not suffered a separate disqualifying conviction, to petition the sentencing court for an order reclassifying the prior conviction as a misdemeanor upon a showing that the value of the stolen property did not exceed $950. (§ 1170.18, subd. (f).)[2]

We are asked to consider whether defendant's petition presented sufficient evidence to demonstrate his initial eligibility for reclassification, thus shifting the burden to the prosecution to offer evidence that defendant was ineligible. We find defendant's *unopposed* petition, which relied on a police report stating the value of the stolen property was $400, was sufficient to demonstrate his initial eligibility for reclassification. We

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[1] Proposition 47, otherwise known as the Safe Neighborhoods and School Act, was passed by California voters on November 4, 2014, and became effective the next day.

[2] Penal Code section 1170.18, subdivision (f) provides: "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, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." All further undesignated statutory references are to the Penal Code.

conclude the court erred in denying the petition without any evidence to rebut the value of the property, or demonstrate defendant had a disqualifying conviction under section 1170.18, subdivision (i). We therefore reverse and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2006, defendant was charged with one count of receiving stolen property (Pen. Code, § 496, subd. (a); count 1), and one count of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a); count 2). The property alleged to have been stolen was a 1993 Honda Accord.

Defendant pled guilty to receiving stolen property and count 2 was dismissed. The court suspended imposition of sentence and placed defendant on three years formal probation. In March 2006, defendant was found to be in violation of probation and was sentenced to state prison. Defendant completed his sentence and was released.

On August 10, 2016, defendant, with the assistance of counsel, filed a one-page form petition pursuant to section 1170.18, subdivision (f) requesting his conviction for receiving stolen property be reclassified as a misdemeanor. Attached to the petition was the face page of the felony complaint charging him in 2006, as well as one page of a police report in which the value of the stolen vehicle is stated to be $400.

On August 15, 2016, the People acknowledged service of the petition, but did not file any opposition. The court set a hearing on the petition for September 12, 2016. At the hearing, defendant was not present, but was represented by appointed counsel. Counsel for the People was also present but did not oppose the petition. The court denied the petition on the grounds a conviction under section 496, subdivision (a), for receiving a

stolen vehicle, is "not Proposition 47 eligible," and because there was "no showing the value of the car was under $950."

This appeal followed.

DISCUSSION

To the extent our review of the trial court's denial of defendant's petition turns on the interpretation of Proposition 47, our review is de novo. (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 743 (*Salmorin*).) "We review any factual findings in connection with the court's ruling on the petition for substantial evidence." (*Ibid.*; accord, *People v. Johnson* (2016) 1 Cal.App.5th 953, 960 (*Johnson*).)

1. A Felony Conviction for Receiving a Stolen Vehicle Under Section 496, Subdivision (a) Is Eligible for Reduction.

Defendant contends his 2006 felony conviction pursuant to section 496, subdivision (a) is eligible for reduction to a misdemeanor. Respondent concedes this argument. We agree.

Before the passage of Proposition 47, section 496, subdivision (a) was a "wobbler." The former version of the statute "gave the prosecution discretion to charge the offense as a misdemeanor if the value of the property did not exceed $950." (*People v. Varner* (2016) 3 Cal.App. 5th 360, 366, review granted Nov. 22, 2016, S237679, review dism. Aug. 9, 2017.) Proposition 47 amended section 496 to provide that if a defendant receives "any property" that is valued at $950 or less, the offense "shall" be a misdemeanor. (*Ibid.*) Section 496 is expressly enumerated in section 1170.18, and nothing in the statutory language suggests that where the stolen property is a vehicle, a conviction under section 496, subdivision (a) is not subject to reduction upon a proper showing.

2. Defendant's Unopposed Petition Presented Facts Sufficient to Warrant an Evidentiary Hearing.

As the petitioning party, defendant bore the burden of proof to make an initial eligibility showing sufficient to require the granting of relief or to justify a further evidentiary hearing. "The ultimate burden of proving section 1170.18 eligibility lies with the petitioner." (*People v. Romanowski* (2017) 2 Cal.5th 903, 916 (*Romanowski*); accord, *Johnson*, *supra*, 1 Cal.App.5th at pp. 961-965; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137 (*Perkins*); *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880; see also Couzens and Bigelow, Proposition 47—"The Safe Neighborhoods and School Act" (May 2017) p. 44 (Couzens and Bigelow).)

In order to discharge this burden, a defendant, in some instances, may be able to rely solely on the petition and the record of conviction. (*Romanowski*, *supra*, 2 Cal.5th at p. 916.) "But in other cases, *eligibility for resentencing may turn on facts that are not established by either the uncontested petition or the record of conviction*. In these cases, an 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.' " (*Ibid.*, italics added.)

"The initial screening of the petition for reclassification is similar to the initial screening of a petition for writ of habeas corpus. California Rules of Court, Rule 4.551(f) provides that

'[a]n evidentiary hearing is required if . . . 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.' " (Couzens and Bigelow, *supra*, at p. 84, italics added; accord, *People v. Sledge* (2017) 7 Cal.App.5th 1089, 1095 (*Sledge*); see also *People v. Huerta* (2016) 3 Cal.App.5th 539, 543 [sentencing court considering section 1170.18 petition acted within its discretion in considering court records and setting an evidentiary hearing to resolve disputed facts underlying the prior conviction].)

Several courts have concluded that in making an eligibility determination, the trial court is not limited to review of the record of conviction. (See, e.g., *Romanowski*, *supra*, 2 Cal.5th at p. 916; *Sledge*, *supra*, 7 Cal.App.5th at p. 1095 [petitioning defendant not limited to record of conviction; nor is prosecution so limited in opposing petition]; *Johnson*, *supra*, 1 Cal.App.5th at pp. 966-968 ["a petitioning defendant is entitled to present evidence of facts *from any source*"]; *Perkins*, *supra*, 244 Cal.App.4th at p. 140 [petitioning defendant may submit "a declaration, court documents, record citations, or other probative evidence" demonstrating eligibility for relief].)

As *Johnson* aptly explained, "[t]his is because, prior to Proposition 47, where a defendant was convicted of certain drug- or theft-related felonies, the facts necessary to establish that the petitioning defendant was guilty either of a misdemeanor added by Proposition 47 or of a felony reduced to a misdemeanor by Proposition 47 likely would have been irrelevant in charging the defendant with the pre-Proposition 47 felony." (*Johnson*, *supra*, 1 Cal.App.5th at pp. 966-967.) "In the case of receiving stolen property, for example, the only fact necessary—

indeed, the *only* fact available—to establish that a petitioning defendant would have been guilty of a misdemeanor under Proposition 47 is that the value of the stolen property did not exceed $950. (§ 496, subd. (a).) Prior to Proposition 47, however, the value of the property was not at issue where the defendant was charged with a felony. (§ 496, former subd. (a).)" (*Id*. at p. 967, fn. 13.)

Moreover, because an eligibility hearing under Proposition 47 is a type of sentencing proceeding, the court has broad discretion to consider relevant evidence, including, where appropriate, hearsay statements deemed substantially reliable. (See, e.g., *People v. Towne* (2008) 44 Cal.4th 63, 85 [sentencing court vested with broad discretion to consider relevant evidence]; *People v. Arbuckle* (1978) 22 Cal.3d 749, 754-755 [same]; *People v. Lamb* (1999) 76 Cal.App.4th 664, 683 [sentencing court may consider unsworn or hearsay statements so long as there is "a substantial basis for believing the information is reliable"]; see also Pen. Code, § 1170, subd. (b) [sentencing court may consider probation officer's report].)

"Nothing in Proposition 47 suggests the applicable rules of evidence are any different than those which apply to other types of sentencing proceedings. Accordingly, limited use of hearsay such as that found in probation reports is permitted, provided there is a substantial basis for believing the hearsay information is reliable." (*Sledge*, *supra*, 7 Cal.App.5th at p. 1095.)

Here, defendant offered evidence that the stolen property for which he was convicted of receiving was worth $400. His petition attached page 3 of what appears to be the nine-page police report relevant to the prior conviction. The document references an Officer Polanco and identifies the stolen property as

a "93-Honda Accord 4DR BLK" with "$400" written under the column marked "value."

The People did not oppose defendant's petition with evidence showing a different value for the vehicle, nor did the People object to the excerpt of the police report proffered by defendant. In this court, respondent speculates the $400 stated value was likely noted by the officer not as evidence of actual value but only because it was the then-applicable threshold for a felony count. Respondent's speculation is not implausible but the fact remains that the prosecution did not object to the valuation in the police report or offer any other evidence of the car's value.

Respondent also argues defendant offered no evidentiary foundation as to how the $400 value was determined and quotes from parts of *Johnson*, *supra*, 1 Cal.App.5th at pages 961, 968 and 970, discussing the evidentiary burden on a defendant to show eligibility for resentencing. In *Johnson,* unlike this case, the prosecution opposed the petition on the ground there was insufficient proof of the value of the stolen property. (*Id.* at pp. 958-959.) The Court of Appeal found that the unsigned copy of the police report on which the petitioning defendant relied lacked authentication, and its statements of value of the stolen property contained multiple levels of hearsay. (*Id.* at p. 968, fn. 16.) Since the prosecution's objections were well taken, the trial court properly excluded the police report. Here, however, the prosecution did not object to the value of the stolen property in the police report or say anything to suggest that the valuation in the police report was inadmissible.

In *Salmorin*, *supra*, 1 Cal.App.5th 738, another Proposition 47 case, the key issue was whether in determining the value of property taken in a forgery conviction, the face amount of all the forged checks should be added up to determine

the value of the stolen property; the court concluded they should not. There, the trial court had received into evidence without objection the police report and copies of the forged checks offered by the prosecution. The Court of Appeal found: "the parties here agreed that the court needed additional facts from the police report to determine whether [defendant] was entitled to relief. Counsel for [defendant] not only agreed to the admission of the police report, she relied on the report to argue that only one check, in the amount of $245, was attributable to [defendant]. Therefore, the trial court did not err by considering the police report." (*Salmorin,* at p. 744.)

We agree with *Salmorin* that, when there is no objection to the trial court considering valuation in the police report, it may be considered as evidence of value to determine the petitioning defendant's initial eligibility for resentencing. Unless the court has some evidentiary basis on which to find the valuation in a proffered police report is unreliable, the court should accept it as sufficient to show the defendant's initial eligibility.

DISPOSITION

The order denying defendant and appellant John Robert Castillo's petition for reclassification pursuant to Penal Code section 1170.18, subdivision (f) is reversed, and the action remanded to the superior court for further proceedings consistent with this opinion.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.