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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ESTEVAN MENDOZA,

Defendant and Appellant.

B263985

(Los Angeles County
Super. Ct. No. NA076736)

APPEAL from an order of the Superior Court of Los Angeles County, Laura Laesecke, Judge. Order vacated and remanded with directions.

Benjamin P. Lechman, 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 Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Estevan Mendoza appeals from the order denying his application to reclassify his felony conviction for second degree burglary as misdemeanor shoplifting (Pen. Code, § 459.5),¹ a new offense added to the Penal Code in 2014 by Proposition 47. We vacate the order and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

In a felony complaint filed February 14, 2008 the People charged Mendoza with committing second degree burglary and grand theft of property (a laptop computer) from a commercial building occupied by The Boeing Company.

On February 26, 2008 Mendoza waived his rights to a preliminary hearing and a jury trial and entered a negotiated plea of no contest to second degree burglary. The trial court found a factual basis for the plea based on the early disposition program report prepared by the probation department for use at sentencing.

Imposition of sentence was suspended, and Mendoza was placed on three years of formal probation. He was ordered to make restitution to The Boeing Company in an amount to be determined by the probation department. The grand theft count was dismissed pursuant to the plea agreement.

On February 5, 2015 Mendoza filed an application to have his second degree burglary conviction reclassified as shoplifting under Proposition 47. The trial court summarily denied the application, finding “the amount in question exceeds \$950.”

DISCUSSION

In November 2014 California voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which

¹ Statutory references are to this code.

reduced certain theft and drug offenses to misdemeanors. (See *People v. Gonzales* (2017) 2 Cal.5th 858, 863.) New section 1170.18, added by Proposition 47, permits an eligible defendant serving a felony sentence for one of the enumerated theft or drug offenses to petition for recall of sentence and resentencing under the new, more lenient provisions. (§ 1170.18, subds. (a), (b).) A person who has already completed a felony sentence for an offense that is now a misdemeanor may apply to have his or her conviction designated a misdemeanor. (§ 1170.18, subds. (f), (g); see *Gonzales*, at p. 863.)

Proposition 47 also added several provisions to the Penal Code, including section 459.5, which created the crime of shoplifting. Section 459.5, subdivision (a), provides, “Notwithstanding Section 459, shoplifting is defined 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. Shoplifting shall be punished as a misdemeanor”²

In denying Mendoza’s application for reclassification of his burglary conviction as shoplifting, the trial court found the value of the stolen laptop computer was more than \$950. Mendoza

² Section 459 defines burglary as entry into “any house, room, . . . store . . . or other building . . . with intent to commit grand or petit larceny or any other felony.” Second degree burglary, Mendoza’s crime, is every burglary that is not of an inhabited dwelling. (§ 460.)

contends the court's valuation finding is not supported by substantial evidence.

Mendoza is correct that nothing in the record established the value of the stolen computer. Indeed, at the time of Mendoza's crime, the value of property stolen during a burglary was not an element of the offense. Because Mendoza was also charged with felony grand theft, defined at the time as unlawfully taking money or personal property valued in excess of \$400, the computer's value may have been discussed in the early disposition program report. However, that document is not part of the record on appeal.³ Similarly, although Mendoza was ordered to pay restitution to The Boeing Company, the record contains no probation report, reporter's transcript or minute order reflecting a subsequent award of victim restitution.

Contrary to Mendoza's argument, however, the absence of evidence that the value of the stolen laptop computer exceeded \$950 does not entitle him to Proposition 47 relief. It was Mendoza's burden to prove the item stolen was worth \$950 or less, not the People's burden to establish it was worth more than that sum. (*People v. Romanowski* (2017) 2 Cal.5th 903, 917.) Mendoza failed to carry his burden. The application for reclassification of his burglary conviction consisted of a single

³ After repeated requests to the superior court clerk to augment the record, culminating in this court's order for production of "all documents the trial court used to make its determination that the offense was not subject to reclassification," Mendoza's appellate counsel was informed by the clerk that the court file for the case could not be located. In place of the original file, a "dummy file" was created containing the reporter's transcripts, clerk's transcripts and other documents that had not been lost.

standardized form on which he checked a series of boxes stating he was convicted of “Penal Code § 459 2nd Burglary (Shoplifting),” had completed his sentence and was not otherwise ineligible under section 1170.18 for the requested relief. The application provided no information about the laptop computer, let alone any evidence of its value.

Notwithstanding Mendoza’s failure to provide the trial court with the information necessary for it to determine his eligibility for reclassification, under the circumstances we do not affirm the court’s order denying his application. When Mendoza filed his application for Proposition 47 relief in February 2015, it was unclear who had the burden of establishing the value of a stolen item. Section 1170.18 is silent on this point. The first published appellate case holding the party seeking relief under Proposition 47 had the initial burden of proof as to eligibility was not decided until August 2015. (See *People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880.)⁴ Furthermore, the standard form application that Mendoza completed did not require him to state a factual basis for the valuation of the laptop computer. Accordingly, the appropriate disposition here is to vacate the trial court’s order and remand the matter to allow Mendoza, if he is able to do so in good faith, to file an amended application that provides the necessary factual information to establish eligibility for relief under sections 459.5 and 1170.18. (See e.g. *People v. Sweeney* (2016) 4 Cal.App.5th 295, 302-303; *People v. Perkins* (2016) 244 Cal.App.4th 129, 141; *Sherow*, at p. 881.) Specifically,

⁴ In *People v. Gonzales*, *supra*, 2 Cal.5th at page 875 and more recently in *People v. Romanowski*, *supra*, 2 Cal.5th at page 917, the Supreme Court confirmed it is the defendant’s burden to demonstrate his or her eligibility for relief.

Mendoza must show the value of the stolen laptop computer was \$950 or less and it was taken from a commercial establishment that was open during regular business hours at the time of the theft.

DISPOSITION

The April 2, 2015 order denying the application for reclassification of Mendoza's second degree burglary offense is vacated. The matter is remanded for the trial court to give Mendoza leave to file an amended application as directed in this opinion.

PERLUSS, P. J.

We concur:

ZELON, J.

BENSINGER, J.*

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