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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JULIUS CAESAR MATHIS, Defendant and Appellant.	B279356 (Los Angeles County Super. Ct. No. A972655)

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

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Julius Caesar Mathis (defendant) appeals from an order denying his application to reduce his 1988 felony conviction to a misdemeanor pursuant to Proposition 47. Defendant contends that the conviction was for theft, and the trial court erred in finding the offense ineligible for relief. We conclude the conviction was not for theft, but for forgery of an access card in violation of former Penal Code section 484f, subdivision (2),[1] which is ineligible for reduction to a misdemeanor. We thus find no error, and affirm the order.

BACKGROUND

In 1988, defendant was convicted of a felony. In 2016, he filed an application under Proposition 47 to reclassify the felony conviction as a misdemeanor. The application described the conviction as a violation of section "484(f)(2)" with a value of less than $951. On October 3, 2016, the trial court denied the petition without an evidentiary hearing. Defendant filed a timely notice of appeal from the order.

DISCUSSION

As relevant here, Proposition 47, the Safe Neighborhoods and Schools Act, provides: "A person who . . . would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may [apply] to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).) As defendant bears the burden of proof, his initial showing must be sufficient to require granting relief or to justify a further evidentiary hearing. (See *People v. Romanowski* (2017) 2 Cal.5th 903, 916-917; *People v. Sherow* (2015) 239 Cal.App.4th 875, 880.) Defendant's application did neither.

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

Defendant contends that the 1988 crime was "fraudulent use of a credit card" in violation of section 484, subdivision (f)(2). Indeed, both defendant and respondent contend that defendant was convicted of a violation of section 484, subdivision (f)(2). However, section 484 did not have a subdivision (f) in 1988. (See Stats. 1980, ch. 1090, § 1.) Nor is there a subdivision (f) in the current version of section 484, which defines theft. Although there was no section 484, subdivision (f)(2), in 1988, there was a section 484f, subdivision (2). (See Stats. 1986, ch. 1436, § 3.) Former section 484f was titled, "Forgery of access card." Subdivision (1) provided: "Every person who, with intent to defraud, designs, makes, alters, or embosses a counterfeit access card or utters[2] or otherwise attempts to use a counterfeit access card is guilty of forgery." Subdivision (2) provided: "A person other than the cardholder or a person authorized by him or her who, with intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery."

It thus appears likely that defendant's 1988 conviction was for a violation of former section 484f, subdivision (2), which is identical to subdivision (b) of the current version of section 484f. (See § 484f; Stats. 1998, ch. 468, § 11.) The *use* element appears in subdivision (a), which is identical to the former subdivision (1). There is no use element in subdivision (b) or former subdivision (2); the crime is complete upon *signing* another's

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2 "'The word[] "utter". . . in the law of forgery, [means] "to declare or assert, directly or indirectly, by words or actions," that the forged instrument is genuine. . . . To complete the offense of uttering . . . , it is not necessary that the note should be passed.' [Citation.]" (*People v. Larue* (1938) 28 Cal.App.2d 748, 753.)

name or a fictitious name on one of the specified documents, with intent to defraud.

Nevertheless, defendant argues that the crime must have consisted of the use of a credit card to obtain goods or services. He infers support for this argument in the description of the crime in the abstract of judgment as "fraudulent use card," and in the trial court's shorthand in denying the application on the ground that "[t]he crime is the fraudulent use of a card and is not Prop. 47 eligible."[3] Defendant concludes that the crime was using a credit card to obtain goods or services. He argues that such a crime amounts to theft by false pretenses and is thus eligible for reduction pursuant to section 490.2, or in the alternative, that it amounts to shoplifting under section 459.5. Both sections were added by Proposition 47. (See Prop. 47 (2014).) Section 490.2 provides that theft is a misdemeanor when the value of money, labor, real or personal property taken does not exceed $950. Section 459.5 consists of "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours," where defendant takes or intends to take property with value of $950 or less. Despite the shorthand used by the trial court and the court clerk in the abstract of judgment, the record fails to show that defendant used a credit card to obtain goods or services, or that he stole a credit card or credit

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[3] The trial court did not recite what documents it reviewed in ruling on defendant's application, and the minutes of the ruling state, "NO LEGAL FILE." The minutes describe the prior conviction as "484(f)2," which is identical to the designation of the Penal Code section on the 1988 abstract of judgment in the augmented clerk's transcript. Other minute orders in the augmented record relating to the 1988 conviction describe the offense as "484F(2)" and "484F2." The information has not been made part of the appellate record.

card information, or that he entered a commercial establishment with intent to commit larceny. (See § 459.5, subd. (a).) No documents were attached to the application, the trial court did not have the legal file, and the record on appeal is devoid of facts relating to the circumstances of the crime.

There was no evidence of any loss associated with the crime. Defendant asserts that the trial court made a finding of loss of $950 or less, but the record does not support his assertion. The "finding" to which defendant refers is a section of the minute order of the ruling in which the court clerk summarized the *prosecutor's* reason for objecting, as follows: "Although the amount of loss is less than $950.00, this case involves more of a fraud offense, and not a 'theft' offense." The record of the oral proceedings reflects no such statement by the court. The prosecutor's objection and argument, if made orally on the record, were not transcribed, and we do not discern a concession in the clerk's summary.

Trial court orders are presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We thus resolve any ambiguity in favor of the court's ruling, and conclude that defendant's crime was not forgery by the *use* of an access card with the intent to defraud, as prohibited by section 484f, subdivision (a) or former subdivision (1). Rather, it was forgery committed by signing one or more of the specified instruments with the intent to defraud, as prohibited by section 484f, subdivision (b) or former subdivision (2).[4]

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[4] We also reject defendant's assertion that the crimes could have been a violation of the "current" section 484g. The current section 484g made no material change to the section 484g in effect in 1988. (See Stats. 1986, ch. 1436, § 4.) Section 484g provides in essence, that obtaining anything of value with the fraudulent use of an access card is theft, as it did in 1988. There is no indication in this record that defendant obtained anything with an access card. If he had, he could have been convicted under section 484g in 1988.

The punishment for forgery is set forth in section 473, subdivision (a), as a "wobbler" offense (a crime punished either as a felony or a misdemeanor), as it was in 1988. (Stats. 1976, ch. 1139, § 211.) Proposition 47 added subdivision (b) to section 473, under which forgery is punishable only as a misdemeanor when it relates "to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, [the value of which] does not exceed nine hundred fifty dollars ($950)." (§ 473, subd. (b).) As there is no indication in the record whether defendant's crime related to any of the enumerated instruments, it remains punishable under section 473, subdivision (a). Thus, on this record, defendant's crime was a felony in 1988, and would not have been a misdemeanor if Proposition 47 had been then in effect. The trial court did not err in ruling that defendant's felony conviction of forgery was not eligible for reduction. (See § 1170.18, subd.(f).)

DISPOSITION

The order is affirmed.

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_____, Acting P. J.
CHAVEZ

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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