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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ROBERT ENCISO, Defendant and Appellant.	B279333 (Los Angeles County Super. Ct. No. BA284032)

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

Elizabeth K. Horowitz, 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 Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Robert Enciso was convicted of grand theft of an automobile in 2005. In 2016, he sought to have the conviction reduced to a misdemeanor under Proposition 47. The court denied defendant's petition, holding that the offense was ineligible for relief under Proposition 47. This ruling was incorrect as a matter of law, and we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2005, defendant was convicted of violating Penal Code section 487, subdivision (d)(1)[1] (section 487(d)(1)), grand theft of an automobile. The record on appeal contains the minute order from defendant's sentencing and the abstract of judgment, but no further information about the crime.

On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the following day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*).) "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*Id.* at p. 1091.) Under section 1170.18, a person who has completed a sentence for a felony offense that would have been considered a misdemeanor under Proposition 47 may file an application to have the felony conviction designated as a misdemeanor. (§ 1170.18, subd. (f).)

Proposition 47 added section 490.2 to the Penal Code, which states, "Notwithstanding Section 487 or any other

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

provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor." (§ 490.2, subd. (a).) Thus, "after the passage of Proposition 47, 'obtaining any property by theft' constitutes petty theft if the stolen property is worth less than $950." (*People v. Romanowski* (2017) 2 Cal.5th 903, 908 (*Romanowski*).) If the value of the automobile taken does not exceed $950, therefore, the defendant may be eligible for resentencing if the other requirements of section 1170.18 are met.

On October 12, 2016, defendant filed a form application seeking resentencing under Proposition 47. Rather than checking the box denoting a conviction under section 487, defendant wrote that he was convicted under "PC 487d < $950." No additional information was included about the crime, the type of vehicle stolen, or the value of the vehicle.

At a hearing on November 15, 2016, the court called the case and immediately stated, "Motion is denied. 487(d)(1) is not within the purview of Prop. 47." Defendant's attorney said, "Objection noted for the record." The court acknowledged the objection, and the hearing ended. The minute order from the hearing states, "The court denies the application for reduction to a misdemeanor pursuant to Proposition 47. [¶] The specified offense is ineligible for relief pursuant to Proposition 47. [¶] Conviction charge of section 487(d)(1) of the Penal Code is an ineligible offense for reduction pursuant to Proposition 47. No evidence is presented that the value of the vehicle was less than $950.00[.]"

Defendant timely appealed.

STANDARD OF REVIEW

The parties disagree about what is at issue in this case. Defendant argues that the court denied his petition as a matter of law, erroneously holding that a conviction under section 487(d)(1) is not eligible for Proposition 47 relief. The Attorney General, on the other hand, argues that the court properly denied defendant's application because defendant failed to carry his burden of showing that the vehicle at issue had a value of $950 or less. "We review the trial court's legal conclusions de novo and its findings of fact for substantial evidence." (*People v. Trinh* (2014) 59 Cal.4th 216, 236.)

DISCUSSION

"Prior to the changes wrought by Proposition 47, section 487 set out of three categories of theft that were charged as grand theft solely because of the property involved—theft of guns, theft of cars, and theft of property from the victim's person. (See § 487, subds. (c)-(d).)" (*Romanowski, supra*, 2 Cal.5th at p. 908.) "These are the provisions that Proposition 47 modified by inserting a $950 threshold." (*Ibid*.) "The text and structure of Proposition 47 convey that section 490.2's clear purpose was to reduce punishment for crimes of 'obtaining any property by theft' that were previously punished as 'grand theft' when the stolen property was worth less than $950." (*Id*. at p. 909.) Thus, "after the passage of Proposition 47, an offender who obtains a car valued at less than $950 by theft must be charged with petty theft and may not be charged as a felon under any other criminal provision." (*People v. Van Orden* (2017) 9 Cal.App.5th 1277, 1288.) Accordingly, defendant's conviction fell within the purview of Proposition 47, and the court erred as a matter of law by holding otherwise.

The Attorney General argues, however, that defendant's application was properly denied because defendant failed to present any evidence that the value of the vehicle at issue was $950 or less. Indeed, "[t]he ultimate burden of proving section 1170.18 eligibility lies with the petitioner." (See Evid. Code, § 500.)" (*Romanowski, supra*, 2 Cal.5th at p. 916.) Where eligibility for resentencing turns on facts that are not established by either the uncontested petition or the record of conviction, an evidentiary hearing may be required. (*Ibid.*) "An evidentiary hearing is 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." (Cal. Rules of Court, rule 4.551(f); see also *Romanowski, supra*, 2 Cal.5th at p. 916 [when eligibility for resentencing under Proposition 47 requires evidence outside the record of conviction, this standard for an evidentiary hearing applies].)

Here, defendant argues that his ability to present any evidence at a hearing was thwarted by the court's immediate and erroneous legal ruling that defendant's conviction was ineligible for Proposition 47 relief as a matter of law. We agree. Although an evidentiary hearing is not warranted in every instance, here the extremely brief hearing and the court's legal pronouncement suggest that the court did not consider whether an evidentiary hearing was warranted under the facts of this case. The court stated in its minute order that defendant presented no evidence that the vehicle in question was valued at $950 or less, but at the hearing it did not address the value of the vehicle or suggest that

it was denying the application on any factual basis. To the contrary, the court stated at the hearing that the conviction was "not within the purview of Prop. 47." Because the court stated incorrectly that defendant's conviction was not eligible for Proposition 47 relief and it did not consider whether an evidentiary hearing was warranted, the court's ruling must be reversed.

DISPOSITION

The order denying defendant's application is reversed. The matter is remanded to the trial court for a determination whether an evidentiary hearing is required relating to the value of the vehicle at issue or any other facts pertaining to defendant's eligibility for relief under Proposition 47.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.