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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG WILLIAM VOSS,

Defendant and Appellant.

2d Crim. No. B286260
(Super. Ct. No. 2011025347)
(Ventura County)

Craig William Voss appeals an order denying his petition for resentencing under Proposition 47, the Safe Neighborhoods and Schools Act. (Pen. Code, § 1170.18.)¹ Voss previously pled guilty to identity theft (§ 530.5, subd. (a)), a felony. Voss claims his conduct in committing that identity theft offense met the elements of shoplifting under Proposition 47 and his conviction should be reduced to a misdemeanor. We conclude the trial court erred by ruling Voss was ineligible for resentencing under Proposition 47. We reverse and remand.

¹ All statutory references are to the Penal Code.

FACTS

On June 25, 2011, Michael San Martin was driving his car when he noticed “flashing red and blue light[s]” behind him. He heard Voss loudly state, “Pull over to the right hand side.” San Martin believed he was being stopped by a police officer. Voss was not a law enforcement officer, but he wore clothing that looked like a deputy sheriff’s uniform. San Martin stopped.

Voss walked over to San Martin’s car and said, “Can I see your license and registration?” San Martin attempted to take his license out of his wallet. Voss took the wallet and walked back to his car. Voss returned and said there had been a mistake and he returned the wallet to San Martin.

When San Martin returned home, he discovered that two of his credit cards were missing. He later discovered that one of the cards had been used for one “\$30 transaction” and two “\$40 transactions.”

In 2012, Voss pled guilty to impersonating a public officer (§ 146a, subd. (b)) and felony identity theft (§ 530.5, subd. (a)). He also pled guilty to two counts of residential burglary (§ 459), felonies.

On August 17, 2017, Voss filed a petition for resentencing on his identity theft conviction (§ 530.5, subd. (a)) under Proposition 47. The trial court denied the petition. It ruled identity theft was a crime that “does not qualify for resentencing” under Proposition 47.

DISCUSSION

Eligibility for Resentencing under Proposition 47

Voss contends the trial court erred by ruling he was ineligible for resentencing under Proposition 47. We agree.

Proposition 47 reduces “penalties for certain theft and drug offenses by amending existing statutes.” (*People v. Gonzales*

(2017) 2 Cal.5th 858, 863.) Its goal is to “reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.” (*Id.* at p. 870.) “Section 1170.18 now permits a defendant serving a sentence for one of the enumerated theft or drug offenses to petition for resentencing under the new, more lenient, provisions.” (*Id.* at p. 863.) If the felony offense committed “by an eligible defendant would have been a misdemeanor [under Proposition 47], resentencing is required unless, ‘the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’” (*Ibid.*)

Proposition 47 added a new misdemeanor shoplifting crime. (*People v. Gonzales, supra*, 2 Cal.5th at p. 863.) If the defendant’s conduct in committing the prior felony falls within the definition of this new crime, he or she may be entitled to resentencing relief. The new provision, section 459.5, provides that “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).” In *Gonzales*, our Supreme Court held a “defendant’s act of entering a bank to cash a stolen check for less than \$950, traditionally regarded as a theft by false pretenses . . . , now constitutes shoplifting under [Proposition 47].” (*Id.* at p. 862.) That consequently allows the defendant to “petition for misdemeanor resentencing.” (*Ibid.*)

The *Gonzales* court rejected the People’s claim that if a defendant’s act could be considered shoplifting under Proposition 47, the defendant could lose eligibility for resentencing if that act could also be charged under another Penal Code provision. It

said under Proposition 47, “[a] defendant must be charged only with shoplifting when the statute applies. It expressly prohibits alternate charging and ensures only misdemeanor treatment for the underlying described conduct.” (*People v. Gonzales, supra*, 2 Cal.5th at p. 876.)

The *Gonzales* court also rejected the claim that for consumer protection, identity theft crimes fall outside the scope of Proposition 47. *People v. Romanowski* (2017) 2 Cal.5th 903, 913, said there is no “indication that voters implicitly sought to restrict Proposition 47’s scope based on unstated expectations about consumer protection.”

In *People v. Garrett* (2016) 248 Cal.App.4th 82, 84, the trial court denied a Proposition 47 petition and found the “defendant was not eligible for resentencing because he had entered the convenience store with the intent to commit felony identity theft under Penal Code section 530.5.”

The Court of Appeal reversed the denial of that petition. It held “entering a commercial establishment with the intent to use a stolen credit card to purchase property valued at no more than \$950 constitutes shoplifting,” a misdemeanor eligible for Proposition 47 resentencing. (*People v. Garrett, supra*, 248 Cal.App.4th at p. 84; § 459.5.) It said, “[T]he dispositive issue is whether [the defendant’s] *act* fell within the definition of ‘shoplifting’ under Section 459.5.” (*Garrett*, at p. 88, italics added.) “[W]e must interpret Section 459.5 as if it defined shoplifting to mean ‘entering a commercial establishment with intent to commit *theft*.’” (*Ibid.*) It noted that under section 484 the definition of “theft” includes taking property of another “by any false or fraudulent representation or pretense.” (*Id.* at pp. 88-89.) The court said, “Using another person’s credit card to

purchase property without the card owner's consent is 'theft' under this definition." (*Id.* at p. 89.)

In *People v. Jimenez* (2018) 22 Cal.App.5th 1282 (review granted July 25, 2018, S249397), we held a defendant convicted of identity theft under section 530.5, subdivision (a) for entering a commercial establishment to cash stolen checks valued at less than \$950 was not categorically ineligible for Proposition 47 relief. In our opinion we explain why the case authority the People rely on is not persuasive and not consistent with *Gonzales*.

In *People v. Brayton* (2018) 25 Cal.App.5th 734 (review granted Oct. 10, 2018, S251122), we held a defendant convicted of identity theft who used another person's driver's license to falsely identify herself was eligible for Proposition 47 relief.

Here the facts of Voss's identity theft crime are similar to *Gonzales*, *Garrett*, *Jimenez* and *Brayton*. In *Gonzales*, entering a bank to cash a stolen check fell within the purview of the resentencing provision. In *Garrett*, using another person's credit card to purchase property constituted misdemeanor shoplifting under Proposition 47. Voss, like *Garrett*, used San Martin's credit card to purchase property or services totaling \$110. That falls within Proposition 47. (*People v. Garrett, supra*, 248 Cal.App.4th at p. 89.)

DISPOSITION

The order denying the Proposition 47 petition is reversed. The matter is remanded to the trial court for further proceedings on that petition.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Kevin J. McGee, Judge
Superior Court County of Ventura

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