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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GLEN DALE COLLINS, Defendant and Appellant.	B269524 (Los Angeles County Super. Ct. No. YA076901)

APPEAL from an order of the Superior Court of Los Angeles County, Scott M. Gordon, Judge. Affirmed in part, reversed in part, and remanded with directions.

Tyrone A. Sandoval, 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, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Glen Dale Collins appeals from an order denying in part his Proposition 47 petition for a recall of sentence (former Pen. Code, § 1170.18, subd. (a)[1]). He contends, and the Attorney General concedes, that he is eligible for reduced punishment on his convictions for five counts of selling, transferring or conveying an access card (§ 484e, subd. (a); counts 3, 5, 6, 8, and 11), for which he received felony sentences. He similarly contends he is eligible for Proposition 47 relief as to one count of forging an access card signature (§ 484f, subd. (b); count 16) for which he was also given a felony sentence, and he argues a contrary conclusion would violate equal protection guarantees. Finally, he claims the trial court erroneously failed to consider his request for Proposition 47 relief as to his earlier burglary convictions in superior court case Nos. YA010018 and KA017148.

We affirm the trial court's order denying Proposition 47 relief as to appellant's forgery offense under section 484f, subdivision (b), because that offense does not qualify for Proposition 47 relief under the measure's plain language. Based on the Supreme Court's recent decisions in *People v. Romanowski* (2017) 2 Cal.5th 903 (*Romanowski*) and *People v. Page* (2017) 3 Cal.5th 1175 (*Page*), we reverse the order denying appellant's petition for Proposition 47 relief as to the five counts of selling, transferring or conveying an access card in violation of section 484e, subdivision (a), and we remand the matter for an evidentiary hearing in part as to the fair market value of the stolen access cards at issue. On remand, the court is also directed to rule on appellant's Proposition 47 petition as to his

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[1] Subsequent section references are to the Penal Code.

earlier burglary convictions in case Nos. YA010018 and KA017148.

FACTS AND PROCEDURAL HISTORY

The trial court summarized the facts of appellant's case as follows: "The commitment offense (case no. YA076901) occurred on November 7, 2009. Victim Ron Spears' apartment, including a home office, was attached to a banquet hall he owned and operated. [Appellant] was a member of the bridal party of a wedding being [held] at the banquet hall. [Appellant] met with Spears inside Spears' home office. Spears left the office briefly and upon his return, he discovered that his wallet had been stolen. Spears checked his bank records and noticed two unauthorized fraudulent charges. Surveillance video at Toys R Us captured [appellant] making the purchases. [Citation.] The instant case (case No. YA076901) was consolidated with two other cases (case Nos. BA365513 and KA089743). Case No. BA365513 involved [appellant] stealing three wallets while at USC in October 2009 and using the credit cards in those wallets to make various purchases. [Citation.] Case No. KA089743 involved [appellant] stealing two wallets while at Cal Poly Pomona in January 2010 and using the credit cards contained in those wallets to make various purchases."

"On October 7, 2011 [appellant] was convicted by a jury of 15 counts (five counts of theft (§ 484e, subd. (a) [counts 3, 5, 6, 8, and 11]), eight counts of second degree burglary (§ 459 [counts 2, 4, 7, 9, 10, 12, 13, & 15]), . . . and two counts of forgery (§ 484f, subd. (b) [counts 14 and 16]). On January 13, 2012, [appellant] was sentenced to 57 years to life."

On August 24, 2015, appellant filed a Proposition 47 (§ 1170.18, subd. (a)) petition for a recall of sentence as to his burglary, grand theft, and forgery convictions for which he was serving felony sentences. On August 28, 2015, the trial court denied the petition without prejudice on the grounds that appellant failed to serve the petition on the People and failed to indicate the monetary value of the property involved.

In addition to his Proposition 47 petition, appellant also sought a recall of his sentences and resentencing under Proposition 36 (§ 1170.126, subd. (b)). On October 30, 2015, the court granted appellant's Proposition 36 petition. On November 20, 2015, the date he was to be resentenced, appellant filed an amended Proposition 47 petition adding to his original request a new request for resentencing on his burglary convictions in case Nos. YA010018 and KA017148. That amended petition included the amounts charged to the stolen cards, but did not attribute a value to the access cards themselves. The court put over resentencing to the hearing date on the amended Proposition 47 petition.

On December 14, 2015, the court granted appellant's Proposition 47 petition for resentencing as to four of appellant's burglary offenses (counts 2, 4, 7, and 10). The petition was otherwise denied, except the court did not address the request for resentencing on appellant's burglary convictions in case Nos. YA010018 and KA017148.

As to the request for resentencing on the five counts under section 484e, subdivision (a), the court observed there was conflicting appellate authority concerning whether Proposition 47 applied to a violation of section 484e, subdivision (d), which proscribes "acquir[ing] or retain[ing] possession of access card

account information," without the cardholder's or issuer's consent, and with the intent to use it fraudulently. The trial court elected to follow authority finding that an offense under section 484e, subdivision (d) was not eligible for resentencing under Proposition 47. The court further ruled that even if a violation of section 484e, subdivision (d) qualified for resentencing under Proposition 47, a violation of subdivision (a) would not, because that subdivision targeted a different type of conduct -- selling, transferring, or conveying access cards.

The trial court vacated and set aside the original sentence based on the court's October 30, 2015 order granting the Proposition 36 petition and the subsequent order granting in part the Proposition 47 petition. The court imposed a total prison sentence of 19 years four months. Appellant's total prison sentence thus included felony terms on the five counts under section 484e, subdivision (a) (counts 3, 5, 6, 8, and 11) and the two forgery counts under section 484f, only one of which (count 16) is the subject of this appeal.

DISCUSSION

I. Proposition 47 Applies to Appellant's Convictions Under Section 484e, Subdivision (a).

Appellant argues that his offenses in violation of section 484e, subdivision (a), for which he received felony sentences, are eligible for resentencing as misdemeanor petty theft under Proposition 47. At oral argument, the Attorney General conceded the issue in light of the Supreme Court's decision in *Romanowski*, which was issued after the parties had completed briefing. We agree that *Romanowski*, and the even more recent Supreme Court decision in *Page,* compel the finding that appellant's

convictions under section 484e, subdivision (a) are eligible for resentencing, so long as they do not exceed the $ 950 threshold.

"In 2014, the electorate passed initiative measure Proposition 47, known as the Safe Neighborhoods and Schools Act (the Act), reducing penalties for certain theft and drug offenses by amending existing statutes. [Citation.]" (*People v. Gonzales* (2017) 2 Cal.5th 858, 863 (*Gonzales*).) The Act also added several new provisions, including section 490.2, which creates a new type of petty theft. Section 490.2 provides, in relevant part, "(a) Notwithstanding Section 487[2] or any other 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 . . . ." (Italics added.) This petty theft is punishable as a misdemeanor unless the defendant previously has been convicted of certain specified offenses. (*Id.*, subd. (a).)

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[2] "[S]ection 487 makes it grand theft to steal more than $950 worth of anything; more than $250 worth of the crops or critters listed in subdivision (b); anything at all from the victim's person; or any cars or guns." (*Romanowski, supra*, 2 Cal.5th at p. 907.)

Section 1170.18, subdivision (a),[3] 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. If the offense committed by an eligible defendant would have been a misdemeanor under the Act, resentencing is required unless " 'the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' (§ 1170.18, subd. (b).)" (*Gonzales*, *supra,* 2 Cal.5th at p. 863.)

Section 484e, subdivision (a) provides, "Every person who, with intent to defraud, sells, transfers, or conveys, an access card[4], without the cardholder's or issuer's consent, is guilty of

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[3] Former section 1170.18, subdivision (a), in effect at the time the trial court heard appellant's petition, stated, in relevant part, "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections . . . 459.5, 473, 476a, 490.2, 496 or 666 of the Penal Code, as those sections have been amended or added by this act."

[4] An "access card" is defined as "any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds." (§ 484d, subd. (2); see *People v. Molina* (2004) 120 Cal.App.4th 507, 512.)

grand theft."[5] Assuming the value of the access card involved did not exceed $950, the issue before us is whether such an offense constitutes "obtaining any property by theft" within the meaning

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[5] Section 484e is part of a comprehensive statutory scheme including sections 484d through 484j, which punishes a variety of fraudulent practices involving access cards. (*People v. Butler* (1996) 43 Cal.App.4th 1224, 1232.) Besides subdivision (a), section 484e includes subdivisions (b), (c), and (d), which provide as follows:

"(b) Every person, other than the issuer, who within any consecutive 12-month period, acquires access cards issued in the names of four or more persons which he or she has reason to know were taken or retained under circumstances which constitute a violation of subdivision (a), (c), or (d) is guilty of grand theft.

"(c) Every person who, with the intent to defraud, acquires or retains possession of an access card without the cardholder's or issuer's consent, with intent to use, sell, or transfer it to a person other than the cardholder or issuer is guilty of petty theft.

"(d) Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft." (§ 484e, subds. (b)-(d).)

Sections 484f (discussed in section II below) and 484i deal with *forgery* offenses involving both counterfeit and real access cards. Section 484g proscribes fraudulently *using* an access card to obtain something of value; if the value of the thing obtained exceeds $950, it is considered grand theft; otherwise, it is petty theft.

of section 490.2, subdivision (a), such that the offense is eligible for resentencing as a misdemeanor under Proposition 47.

In their appellate briefs that predated the *Romanowski* and *Page* decisions, respondent made several arguments in support of its position that Proposition 47 does not apply to a violation of section 484e, subdivision (a). First, respondent contended that in proscribing the unauthorized sale, transfer or conveyance of an access card with fraudulent intent, subdivision (a) does not "primarily define a 'theft' crime." Second, respondent asserted the unauthorized sale, transfer or conveyance of an access card can have profound effects on consumers, and Proposition 47 voters did not intend to reduce the punishment for such an offense. Third, respondent argued an access card has "no inherent fair market value" and thus it is "not amenable to valuation" as contemplated by section 490.2. *Romanowski* and *Page* have foreclosed these arguments.

Romanowski addressed whether a violation of *another* subdivision of section 484e, subdivision (d), constituted petty theft under section 490.2, with the result that the crime was eligible for reduced punishment under Proposition 47. (*Romanowski, supra*, 2 Cal.5th at pp. 907-914.) Section 484e, subdivision (d) provides, "Every person who *acquires or retains possession of access card account information* with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is *guilty of grand theft*." (Italics added.) The *Romanowski* court concluded that section 484e, subdivision (d) indeed was one of the categories of grand theft that Proposition 47 modified "by inserting a $950 threshold." (*Romanowski*, at p. 908.)

Our Supreme Court reasoned that "the voters who approved Proposition 47 had their sights on definitions of grand theft other than the categories in section 487, since section 490.2 refers to '[s]ection 487 *or any other provision of law defining grand theft*.' (§ 490.2, subd. (a), italics added.) For these other forms of grand theft too, Proposition 47 establishes that '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.' (§ 490.2, subd. (a).)

"One of those 'other provision[s] of law defining grand theft' for which Proposition 47 reduced punishment is section 484e, subdivision (d). (§ 490.2, subd. (a).) This subdivision indicates that anyone committing theft of access card information 'is guilty of grand theft.' (§ 484e, subd. (d).) Section 484e also resides in part 1, title 13, chapter 5 of the Penal Code, which is titled 'Larceny.' In just about every way available, the Legislature made clear that theft of access card information is a theft crime. Nothing in the text of the initiative suggested that the voters were implicitly leaving this form of theft out when they used the phrases 'any other provision of law defining grand theft' and 'obtaining any property by theft.' (§ 490.2, subd. (a).) We deny a phrase like 'any other provision of law' its proper impact if we expect a penal statute—whether enacted by the Legislature or the electorate—to further enumerate every provision of the Penal Code to which it is relevant. And we generally presume that the electorate is aware of existing laws. [Citation.] Here this means we must presume that voters were at least aware that the Penal Code sets out 'grand theft' crimes that included theft of access card account information. (§ 484e.) 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. And section 484e confirms that theft of access card information is one of those crimes." (*Romanowski*, *supra,* 2 Cal.5th at pp. 908-909.)

The court rejected the People's argument that, although section 484e, subdivision (d) " 'is punished as grand theft, it does not primarily define a "theft" crime' " and therefore does not describe a crime in which property is "obtained by theft." (*Romanowski*, *supra,* 2 Cal.5th at p. 911.) *Romanowski* found it compelling that "the Legislature chose to place section 484e in a chapter of the Penal Code titled 'Theft' "[6]; even if the use of this heading was not dispositive, "it establishes that the Penal Code at least *refers to* the crime as theft." (*Romanowski*, at p. 912, citing *Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489 ["titles of acts, headnotes, and chapter and section headings may properly be considered in determining legislative intent."].) The court emphasized that the People "offer[ed] no compelling reason why the term 'theft' in Proposition 47 should not apply to a crime that bears that name in the Penal Code." (*Romanowski*, at p. 912.)

The *Romanowski* court addressed the interplay of section 484, which defines "theft," and section 490.2, which applies to property obtained "by theft." Section 484 provides: "Every

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[6] Although the chapter technically is titled "Larceny," section 490a provides that "[w]herever any law or statute of this state refers to or mentions larceny, embezzlement, or stealing, said law or statute shall hereafter be read and interpreted as if the word 'theft' were substituted therefor." (§ 490a.)

person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft." (§ 484, subd. (a).) Section 484 thus defines theft "to include all the elements of larceny, false pretenses, and embezzlement." (*Gonzales*, *supra,* 2 Cal.5th at p. 865.)

In *Romanowski*, the court found that a violation of section 484e, subdivision (d), i.e., acquiring or retaining possession of access card account information without consent and with fraudulent intent, fell within the definition of embezzlement and/or theft by false pretenses. However, the court stopped short of holding that an offense must meet the definition of "theft" under section 484 in order to qualify as an offense of "obtaining any property by theft" for purposes of section 490.2. Rather, the court merely found that "*even if we assume* that section 490.2 only reduces punishment for crimes that require the definition set out in section 484, theft of access card information falls within that definition." (*Romanowski*, *supra,* 2 Cal.5th at p. 913, italics added.)

A colorable argument may be made that *selling, transferring, or conveying* an access card, without the cardholder's or issuer's consent and with a fraudulent intent, does not strictly meet the definition of "theft" under section 484.

The legislative history suggests that the predecessor to subdivision (a) of section 484e was first added to the statute to address the growing problem of trafficking of stolen credit cards. (Vernon L. Sturgeon and Jack B. Lindsey, Bill Memo. to Governor Ronald Reagan re Sen. Bill No. 1055 (1967–1968 Reg. Sess.) August 21, 1967; see Stats.1967, ch. 1395, § 3, former § 484e, subd. (3) ["Every person who sells, transfers, conveys, or receives a credit card with the intent to defraud is guilty of petty theft."].) The current provision may be fairly read to likewise target dealing in stolen access cards. In the case of an access card that is sold, transferred, or conveyed, the technical act of "theft" involving the access card may have occurred well before its sale, transfer, or conveyance. Further, the actor who does the selling, transferring, or the conveying of the card need not be the same actor who dispossessed the rightful owner of the card.

However, we conclude that even if the unauthorized sale, transfer, or conveyance of an access card with a fraudulent intent does not satisfy the definition of "theft" under section 484, the offense still falls within section 490.2. As we read *Romanowski*, the scope of section 490.2 is not limited to offenses that meet the technical definition of "theft" under section 484. Rather, if the Legislature intended that the offense in question be treated as a theft offense, then it is encompassed by section 490.2 and is subject to resentencing if it satisfies the value threshold. Here, the Legislature evidenced its intent to treat a violation of section 484e, subdivision (a) as an access card theft crime by (1) providing that anyone who violates that provision is "guilty of grand theft" (§ 484e, subd. (d)); (2) placing the provision in the chapter of the Penal Code entitled "Larceny"; and (3) placing the

provision within a section of that chapter (§ 484e) entitled "Theft of access cards or account information."

In *Page*, the Supreme Court cleared up any doubt that an offense under subdivision (a) of section 484e may be deemed eligible for resentencing. The court characterized its earlier decision in *Romanowski* as holding that "a person serving a sentence for grand theft under Penal Code section 487 or *another statute expressly defining a form of grand theft (e.g., Pen. Code, §§ 484e*, 487a, 487i) is clearly eligible for resentencing under section 1170.18 if he or she can prove the value of the property taken was $950 or less." (*Page, supra*, 3 Cal.5th at p. 1182, italics added.)[7] Section 484e, subdivision (a) is clearly designated as a "grand theft offense" in the provision itself, and thus a conviction under this provision is eligible for Proposition 47 relief if the value of the access card was $950 or less.

Holding that conduct in violation of section 484e, subdivision (a) is eligible for misdemeanor designation comports with Proposition 47's directive "that the text of the initiative 'shall be broadly construed to accomplish its purposes . . . .' "

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[7] In *Page,* the Supreme Court went one step further than *Romanowski* by holding that theft offenses that are *not* expressly designated in the criminal code as "grand theft offenses" may still qualify for resentencing under section 490.2, so long as the conduct that is criminalized is theft. (*Page, supra*, 3 Cal.5th at pp. 1186-1187.) Thus, in *Page* the court held that a person convicted of Vehicle Code section 10851, which proscribes taking or driving a vehicle without the owner's consent, is eligible to have her felony sentence reduced to a misdemeanor if her "sentence was imposed for theft of the vehicle" (worth $950 or less), rather than for taking or driving the vehicle without the intention to steal it. (*Page,* at pp. 1182, 1187.)

(*Romanowski, supra*, 2 Cal.5th at p. 909, quoting Voter Information Guide, Gen. Elec. (Nov. 4, 2014), text of Prop. 47, §§ 15, 18, p. 74.) As *Romanowski* observed, "downgrading the punishment for theft of access card information worth less than $950 no doubt serves Proposition 47's purpose [reflected in its preamble] of '[r]equir[ing] misdemeanors instead of felonies for nonserious, nonviolent crimes.' [Citation.]" (*Romanowski*, at p. 909.) The court found "no reason to assume that reasonable voters seeking to anticipate the consequences of enacting Proposition 47 would have concluded that theft of access card information worth less than $950 is a serious or violent crime exempt from Proposition 47's reach." (*Ibid*.)

Romanowski rejected the People's argument, essentially identical to the one respondent made in its brief, that " 'there is no reason to think that the voters who enacted Proposition 47 intended to undercut [section 484e's] broad consumer protection.' " (*Romanowski*, *supra,* 2 Cal.5th at p. 913.) The court found that "the People's argument -- that punishment for theft crimes that protect innocent consumers cannot be reduced along with the punishment for other theft crimes -- frames section 484e, subdivision (d)'s purpose far too expansively." (*Romanowski*, at p. 913.) *Romanowski* concluded "[n]othing in Proposition 47 suggests that voters implicitly intended for the initiative's scope to hinge on inferences about the objectives of the crimes at issue." (*Id.* at p. 914.) Further, the court found "it is far from obvious that a reduction in punishment for theft of access card information worth less than $950 -- with no reduction for higher value thefts -- will materially reduce the extent of consumer protection." (*Id.* at p. 913.)

The Supreme Court's reasoning is equally applicable in considering whether voters intended to reduce the punishment for violations of subdivision (a) of section 484e. The fact that subdivision (a) concerns selling, transferring or conveying access cards, while subdivision (d) concerns acquiring or retaining possession of access card account information, does not materially alter the analysis, particularly given the $950 value limit for eligibility for reduced punishment. It is notable that Proposition 47 also downgraded to a misdemeanor the offense of selling stolen property where the value of the property does not exceed $950. (§ 496, subd. (a).[8]) A reduced punishment for the unauthorized sale, transfer, or conveyance of access cards with the intent to defraud is thus consistent with the reduced punishment for the similar offense of selling stolen property. We are persuaded that the electorate intended section 490.2 to apply to offenses under section 484e, subdivision (a).

Finally, respondent contended in its briefing that "an access card is not the kind of property that is amenable to

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[8] "Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, *sells*, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, *if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor*, punishable only by imprisonment in a county jail not exceeding one year," unless it was committed by certain ineligible defendants. (§ 496, subd. (a), italics added.)

valuation in the way that section 490.2 contemplates," as "access cards are qualitatively distinguishable from other types of personal property addressed by the theft statutes in that they are a means of access to other valuable property" and have no intrinsic value. *Romanowski* disposed of the same arguments made in that case, concluding that Proposition 47 did not limit its reach based on the difficulty of measuring the value of stolen property that is intangible. (*Romanowski, supra*, 2 Cal.5th at pp. 910-911.)

The court held that "the $950 threshold for access card information must reflect a reasonable approximation of the stolen information's value, rather than the value of what (if anything) a defendant obtained using that information." (*Romanowski, supra*, 2 Cal.5th at p. 914.) Thus the value of unused access card information would be based on the "reasonable and fair market value" standard, which could require a court to identify how much such information would sell for in the black market. (*Id.* at pp. 914-916.) Similarly, whether the black market value of the stolen access cards involved in this case is over $950 is the dispositive issue here. That issue has not been addressed in the trial court.

In sum, we hold that a violation of section 484e, subdivision (a), constitutes "obtaining . . . property by theft" within the meaning of section 490.2, subdivision (a), with the result Proposition 47 can apply to counts 3, 5, 6, 8 and 11. We will remand the matter to permit the trial court to conduct further proceedings under Proposition 47 as to those counts. In particular, the matter is remanded for an eligibility hearing, at which appellant will bear the burden of demonstrating that the black market value of the stolen access cards involved with

respect to each count did not exceed $950. (See *Romanowski*, *supra,* 2 Cal.5th at pp. 906, 917 [affirming appellate court judgment remanding for value limit determination].)

II. Proposition 47 Does Not Apply to Appellant's Access Card Forgery Offense, and No Equal Protection Violation Occurred.

Appellant contends the court erroneously denied his Proposition 47 petition for resentencing as to count 16, for a violation of section 484f, subdivision (b). Section 484f, subdivision (b) provides, "A person other than the cardholder or a person authorized by him or her who, with the 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."

"Section 473, which prescribes the punishment for forgery, was one of the statutes amended by Proposition 47. [Citation.] Subdivision (a) of section 473 now provides: 'Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.' Subdivision (b) of section 473 now provides, in pertinent part: 'Notwithstanding subdivision (a), any person who is guilty of forgery relating to a *check, bond, bank bill, note, cashier's check, traveler's check, or money order*, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars ($950), shall be punishable by imprisonment in a county jail for not more than one year. . . .' " (*People v. Martinez* (2016) 5 Cal.App.5th 234, 240 (*Martinez*), italics added; see *People v. Bloomfield* (2017) 13 Cal.App.5th 647, 651-652 (*Bloomfield*).)

Thus, "[u]nder subdivision (a) of section 473, forgery convictions are wobblers. Subdivision (b) of section 473 provides an exception to the general rule expressed in subdivision (a), bestowing misdemeanor status upon specified types of forgeries." (*Martinez,* at p. 241.)

Given Proposition 47's amendments to section 473, appellant contends that his forgery offense is eligible for misdemeanor designation pursuant to section 1170.18, subdivision (a). (See fn. 4, *ante*). However, the plain language of section 473 forecloses his argument. "Under subdivision (b) of section 473, a forgery conviction is a misdemeanor if the instrument utilized in the forgery is a check, bond, bank bill, note, cashier's check, traveler's check, or money order with a value of $950 or less. If the forgery does not involve one of the seven instruments specified in section 473, subdivision (b), it is a wobbler under subdivision (a) of section 473." (*Martinez, supra*, 5 Cal.App.5th at p. 241; see *Bloomfield*, *supra,* 13 Cal.App.5th at p. 652 ["the specific language used in section 473(b) means forgery crimes are classified as straight misdemeanors *only* when one of the seven listed instruments is used to commit the crime"].) Appellant's forgery offense involved an access card, which is not encompassed among the seven instruments specified in section 473, subdivision (b); accordingly, his forgery offense under section 484f, subdivision (b) is not eligible for resentencing under Proposition 47. (See *Bloomfield,* at pp. 652-657 [holding felony sentence for access card forgery under section 484f, subd. (a) may not be reduced under Proposition 47 because section 473, subd. (b) excludes access cards from list of qualifying forgery instruments].)

Although appellant acknowledges that access cards are not among the seven instruments listed in section 473, subdivision (b), he argues that his access card forgery offense should nevertheless be deemed eligible for resentencing, as forged signatures on access card sales slips "fall within the same general category of items listed by section 473, subdivision (b) because in all cases the forged signature serves the purpose of signaling the authorization to transfer funds." However, " ' " 'where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed.' " ' " (*Bloomfield, supra*, 13 Cal.App.5th at p. 652.) Interpreting section 473, subdivision (b) to include forgery of access card sales slips would violate this well-accepted maxim of statutory construction.[9]

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[9] In *Bloomfield*, the defendant argued that just as Proposition 47 makes access card theft offenses eligible for resentencing despite the fact that they are not specifically enumerated in section 490.2 (see our discussion in Section I, *supra*), access card forgery offenses likewise should be deemed eligible for resentencing even if not specifically enumerated in the newly amended section 473 pertaining to forgery offenses. (See *Bloomfield, supra*, 13 Cal.App.5th at p. 654.) The court concluded that "Proposition 47's amendment reducing punishment for certain forgery crimes operates differently than section 490.2," which is applicable to theft offenses. (*Bloomfield*, at p. 655.) Whereas section 490.2 changed the meaning of "grand theft" and eliminated distinctions based on the type of property stolen when the property is worth $950 or less, section 473, subdivision (b) "did not change (or even reference) the definition of forgery but *created* a distinction among forgery offenses for severity of punishment based on the type and value of the instrument used." (*Bloomfield*, at p. 655.) Thus, "[t]he Supreme Court's analysis of Proposition 47's effect on theft crimes in *Romanowski* is consistent with the breadth of the language used

Section 470, subdivision (d), the general forgery statute, lists more than 50 different instruments by which forgery can be committed. The first seven instruments listed therein -- check, bond, bank bill, note, cashier's check, traveler's check, or money order -- mirror the seven instruments identified in section 473, subdivision (b). A "receipt for money or property" is one of the instruments of forgery included in section 470, subdivision (d), but is *not* among the first seven instruments. Courts have treated forged access cards sales slips as forgery of " 'receipt[s] for money or property' " under section 470, subdivision (d). (See *People v. Mitchell* (2008) 164 Cal.App.4th 442, 457; *People v. Gingles* (1973) 32 Cal.App.3d 1030, 1035). "We must assume the voters were aware of the broad general definition of forgery and that courts had interpreted section 470(d) to apply to forgery involving access cards." (*Bloomfield, supra*, 13 Cal.App.5th at p. 653). Had the drafters of Proposition 47 intended to reduce the punishments for forgery offenses involving access cards, they could have included "receipts for money or property," or more specifically, "access cards," in section 473, subdivision (b). Or, had they "intended to redesignate *all* forgery offenses valued at less than $950 as misdemeanors, they could have listed each of the instruments identified in section 470(d), rather than only the first seven; or more, simply, they could have referred to 'forgery'

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in section 490.2, but no such intent appears from the much narrower language of section 473(b) concerning punishment for forgery." (*Bloomfield*, at p. 655.) We agree with the court's reasoning in *Bloomfield* and find no inconsistency in concluding that appellant's access card theft offenses are eligible for resentencing but his access card forgery offense is not.

as defined in section 470. We will not rewrite the statute on their behalf." (*Bloomfield,* at p. 653.)

Given the clear and unambiguous text of section 473, it is unnecessary for us to look any further to determine that the electorate did not intend that access card forgery offenses be eligible for misdemeanor designation under Proposition 47.

We also reject appellant's contention that the constitutional guarantee of equal protection requires that his access card forgery offense be treated like forgery offenses involving the seven instruments that qualify for misdemeanor status under section 473, subdivision (b).

" 'The crux of the constitutional promise of equal protection is that persons similarly situated shall be treated equally by the laws.' " (*Bloomfield*, *supra,* 13 Cal.App.5th at p. 657.) "Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, 'equal protection of the law is denied only where there is no "rational relationship between the disparity of treatment and some legitimate governmental purpose." ' " (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) The Legislature "is afforded considerable latitude in defining and setting the consequences of criminal offenses." (*Id.* at p. 887.) "If a plausible basis exists for the [statutory] disparity, courts may not second-guess its ' "wisdom, fairness, or logic." ' " (*Id.* at p. 881.)

Appellant contends that forgery of a signature on an access card sales slip serves the same purpose as forging a signature on one of the seven items listed in section 473, subdivision (b) – namely, to signal the authorization of funds. Even assuming appellant is similarly situated to an individual convicted of forgery using one of the seven instruments listed in section 473,

subdivision (b), we join the *Bloomberg* and *Martinez* courts in determining that the drafters of Proposition 47 and the voters had a rational basis for distinguishing among these types of forgery offenses.

"[T]he use of an access card often transfers the name on the card and card number into the vendor's computer system, potentially affecting the privacy of the consumer. Further, the electronic storage of personal financial information increases the risk such information could be compromised or distributed, particularly in light of data security breaches occurring at businesses and organizations throughout the nation. . . . 'The drafters and electorate could reasonably have determined that fraudulent use of a credit card could result in greater harm than writing a bad check or committing check fraud, since forgery committed with a credit card can result in ongoing financial loss and damage to a victim's credit history, whereas forgery committed with one of the financial instruments listed in section 473[b] will . . . "generally result in more limited harm to a victim centered around a one-time loss." ' [Citation.] For all of these reasons, the electorate could rationally conclude forging a check or similar instrument for $950 or less is not as serious as forging an access card." (*Bloomfield*, *supra,* 13 Cal.App.5th at p. 658, quoting *Martinez*, *supra*, 5 Cal.App.5th at p. 244.)

We conclude the electorate could rationally distinguish between access card forgery crimes and forgery offenses involving use of the first seven instruments listed in section 473, subdivision (b). In light of the broad discretion afforded to the Legislature in setting the punishment for criminal offenses, we conclude that appellant has shown no equal protection violation as a result of section 473, subdivision (b)'s exclusion of access card forgery offenses.

III. Remand for Trial Court Consideration of Appellant's Request for Proposition 47 Relief as to Case Nos. YA010018 and KA017148 Is Appropriate.

Appellant's amended petition filed on November 20, 2015 also alleged appellant was entitled to Proposition 47 relief on his 1992 and 1993 convictions for second degree burglary in superior court case Nos. YA010018 and KA017148, respectively. The petition alleged the monetary values in case Nos. YA010018 and KA017148 were less than $400, and less than $200, respectively.[10]

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[10] On September 24, 2015, the People filed exhibits for a Proposition 47 "suitability hearing." One exhibit was a probation report in case No. YA010018 that discussed facts pertaining to that offense. On October 30, 2015, in connection with its Proposition 36 petition, the court found that, in case No. YA010018, appellant was convicted of "burglary (§ 459)", and in case No. KA017148 he was convicted of second degree burglary.

Neither the People's December 8, 2015 opposition to appellant's petition nor the court's December 14, 2015 comments or ruling during the hearing referred to the above two cases. Appellant, who was representing himself during the December 14, 2015 hearing, also did not raise either case during the hearing.

Appellant now claims the trial court erred by failing to consider and failing to grant Proposition 47 relief as to the above two cases. Respondent concedes "appellant's request for resentencing in case numbers YA010018 and KA017148[] should be remanded for consideration." Because we are remanding as indicated in section I of our Discussion, because of respondent's concession, and for the sake of judicial efficiency, we will remand on this issue as well (Pen. Code, § 1260).[11]

Except as indicated in section II of our Discussion, we express no opinion as to whether appellant is entitled to Proposition 47 relief as to any of his convictions referred to in this decision.

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[11] Had this been the sole issue on appeal, we might well have dismissed the appeal. Appellant never secured a ruling on his petition as to the above two cases (see *People v. Obie* (1974) 41 Cal.App.3d 744, 750) and, because the trial court never ruled one way or the other on the petition as to those two cases, appellant arguably is not aggrieved (see *In re George B.* (1991) 228 Cal.App.3d 1088, 1094) and no appealable order as to those two cases exists. (See *People v. Loper* (2015) 60 Cal.4th 1155, 1159.)

DISPOSITION

The order denying appellant's Proposition 47 petition for a recall of sentence is affirmed, except that, as to counts 3, 5, 6, 8 and 11, the order is reversed and the matter is remanded to the trial court with directions to find that Proposition 47 can apply to a violation of section 484e, subdivision (a), and to conduct a hearing on the value of the stolen access cards at issue, and, if necessary, to determine whether relief under Proposition 47 is warranted. The matter is also remanded with directions to the trial court to rule on appellant's Proposition 47 petition as to his burglary convictions in superior court case Nos. YA010018 and KA017148.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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