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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RODERICK NATHANIEL
WASHINGTON,

Defendant and Appellant.

B288025

Los Angeles County
Super. Ct. No. GA048701

APPEAL from an order of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

John L. Staley, 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, Noah P. Hill and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

In January 2002, Roderick Nathaniel Washington entered a Best Buy store and used false identification to purchase \$2,818.18 worth of merchandise. He then went to a Target store, where he used false identification to purchase \$633.21 worth of merchandise. A jury found him guilty of two counts of second degree commercial burglary for the Best Buy crimes (Pen. Code, § 459) and one count each of grand theft of personal property and identity theft for the Target crimes (Pen. Code, §§ 487, subd. (a), 530.5, subd. (a)).¹ He was sentenced to state prison for a total of eight years, later reduced to six years, and has completed his sentence.

We will call those the January 2008 crimes. Later in 2008 Washington was convicted of identity theft and forgery. Those we will call the post-January 2008 crimes.

In 2018, Washington applied to have unspecified offenses redesignated as misdemeanors under Proposition 47, the Safe Neighborhoods and Schools Act, which reduces certain nonserious and nonviolent crimes, such as low-level theft-related offenses, from felonies to misdemeanors. In his application Washington checked two boxes to indicate (1) he had no conviction requiring that he register as a sex offender and (2) the amount in question was less than \$950, a threshold under Proposition 47. But he failed to identify the crimes for which he was seeking redesignation, and mistakenly stated he had been convicted of identity theft and forgery, when in fact his convictions were for burglary, identity theft, and grand theft. (Washington possibly confused the instant convictions with a second set of convictions—for identity theft and forgery—that he

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

suffered in the same year.) The People opposed the motion on the ground that the Best Buy crimes involved property worth more than \$950.

The trial court denied Washington's application on the ground that the amount in question exceeded \$950. Washington appealed.

DISCUSSION

Washington argues his convictions for the Target crimes should be redesignated as shoplifting offenses because the stolen property was worth less than \$950. Respondent does not dispute that the Target crimes involved amounts less than \$950, but argues Washington's application for redesignation did not specify he was seeking redesignation for those offenses. However, respondent has no objection to Washington filing a new, proper petition.

On November 4, 2014, the voters enacted Proposition 47. (*People v. Page* (2017) 3 Cal.5th 1175, 1181.) A person who has served a sentence for a felony that was reclassified under Proposition 47 may petition the trial court to redesignate the offense as a misdemeanor unless he or she is disqualified by certain other convictions. (§ 1170.18, subds. (a), (f), (i).) Proposition 47 added section 490.2, which states that "Notwithstanding Section 487 . . . , 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" After Proposition 47, petty theft is punished as a misdemeanor. (§ 490.2, subd. (a).)

A defendant seeking redesignation under section 1170.18 "bears the burden of establishing his or her eligibility, including by providing in the petition a statement of personally known

facts necessary to eligibility.” (*People v. Page, supra*, 3 Cal.5th at p. 1188.) To establish eligibility for redesignation on a theory that the offense constituted petty theft, a petitioner must show that the property taken was worth \$950 or less.

Here, Washington’s petition neither specified that he sought redesignation of only the Target crimes nor provided any evidence or record reference to show that the conviction for which he sought redesignation involved an amount of \$950 or less. The petition was therefore properly denied.

But respondent represents he would have no objection to Washington filing a new petition meeting the statutory requirements, and we believe this to be a proper course. (See, e.g., *People v. Perkins* (2016) 244 Cal.App.4th 129, 142 [affirming denial of petition without prejudice to filing a successive petition establishing evidence of eligibility].) Such a petition should allege and, where possible, provide evidence of the facts necessary to eligibility for resentencing under section 1170.18.

DISPOSITION

The trial court's order denying Washington's application for redesignation is affirmed. Nothing in this decision or in section 1170.18 forecloses his filing a new application alleging sufficient facts to support the claim that his offense can be redesignated.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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