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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL EGGLER,

Defendant and Appellant.

B262757

(Los Angeles County
Super. Ct. No. YA090390)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,
Mark S. Arnold, Judge. Affirmed.

Mae G. Alberto, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Robert
M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Michael Egger (defendant) was convicted of felony theft with a prior theft (Pen. Code section 666.5¹). On appeal, defendant contends that the trial court erred in denying his motion to recall his sentence to have his conviction reduced to a misdemeanor pursuant to section 1170.18. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND²

In June 2014, defendant admitted having three prior convictions for violations of Vehicle Code section 10851, subdivision (a); pleaded no contest to felony theft with a prior theft, in violation of section 666.5;³ and was sentenced to four years in state prison. The trial court ordered defendant to make restitution of \$432.40 to the victim, plus interest from the date of loss. As of June 2014, defendant had 28 prior convictions—13 felonies and 14 misdemeanors.

In November 2014, defendant filed an “application/petition for resentencing,” seeking to have his felony conviction reduced to a misdemeanor pursuant to section 1170.18. The trial court denied defendant’s “application/petition” on the ground that section 666.5 “is not covered under Prop[osition] 47.”

In January 2015, defendant filed a “motion to convert felony conviction to misdemeanor pursuant to [section] 1170.18 and the equal protection clause.” The trial court denied defendant’s motion because a conviction for violation of section 666.5 “does

¹ All statutory citations are to the Penal Code unless otherwise noted.

² Because defendant’s only claim on appeal is that his felony conviction must be reduced to a misdemeanor pursuant to Proposition 47, we do not include a statement of facts regarding the count for which he was convicted.

³ The District Attorney of Los Angeles County also charged defendant with unlawful driving or taking of vehicle without owner’s consent in violation of Vehicle Code section 10851, subdivision (a), but that count was dismissed.

not qualify for[a] section 1170.18 reduction to a misdemeanor,” and defendant filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

“Issues of statutory interpretation are questions of law, subject to de novo review.’ [Citation.]” (*People v. Harbison* (2014) 230 Cal.App.4th 975, 980.)

B. Applicable Law

On November 4, 2014, California voters enacted Proposition 47, “The Safe Neighborhoods and Schools Act,” to maximize sentencing alternatives for nonserious, nonviolent crimes. (Couzens, Bigelow & Prickett, *Sentencing California Crimes* (The Rutter Group 2015) § 25.1, pp. 25-1 to 25-2.) Proposition 47 created section 1170.18, which section provides, “(a) 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 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.”

C. Analysis

Defendant contends his felony conviction for violating section 666.5 must be reduced to a misdemeanor pursuant to Proposition 47. We disagree.

Defendant was convicted of violating section 666.5. Section 666.5, subdivision (a) provides in part that, “Every person who, having been previously convicted of a

felony violation of Section 10851 of the Vehicle Code^[4] . . . is subsequently convicted of [that] offense[] shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or a fine of ten thousand dollars (\$10,000), or both the fine and the imprisonment.” “The Legislature’s obvious purpose in enacting section 666.5 was to increase the punishment for repeat offenders.” (*People v. Carter* (1996) 48 Cal.App.4th 1536, 1541.) Section 666.5 is not an offense enumerated by section 1170.18 requiring the conviction be reduced pursuant to section 1170.18.

Proposition 47 created section 490.2, and the violation of that statute is an offense enumerated by section 1170.18. Section 490.2 provides in relevant part, “[O]btaining 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” Defendant argues that in connection with his conviction for violating section 666.5, he was ordered to make restitution in an amount less than \$950. Defendant reasons therefore his conviction for violating section 666.5 is now a misdemeanor under section 490.2, and that conviction entitles him to have his felony conviction reduced to a misdemeanor.

We do not have to reach the issue of whether a conviction for violating section 666.5 is the type of theft offense that under section 490.2 compels the section 666.5 conviction to be reduced to a misdemeanor. The record does not disclose the nature of the victim’s loss represented by the amount of restitution (\$432.40, plus interest), including whether that restitution amount represented “the value of the . . . personal property taken.” (§ 490.2) Defendant was ordered to make restitution to the victim

⁴ Vehicle Code section 10851 provides in part: “(a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.”

pursuant to section 1202.4, subdivision (f), which section provides in part: “[I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.” Section 1202.4, subdivision (f)(3)(A) provides that amount of restitution shall include the “[f]ull or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.” There is no indication in the record that the victim was permanently deprived of his vehicle. The record does not disclose that defendant was ordered to make restitution for “the replacement cost of like property.” Defendant may have been ordered to make restitution in an amount that represented, for example, the value of damage to the property. Defendant has not established that he is eligible to have his felony conviction for violating section 666.5 reduced to a misdemeanor under section 1170.18.

DISPOSITION

The judgment is affirmed.

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MOSK, Acting P. J.

We concur:

KRIEGLER, J.

BAKER, J.