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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.

ROGELIO BANUELOS,

Defendant and Appellant.

B261696

(Los Angeles County
Super. Ct. No. TA133315)

APPEAL from an order of the Superior Court of Los Angeles County, Joel M. Wallenstein, Judge. Affirmed.

Richard L. Fitzer, 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 Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

A three-count information filed May 16, 2014 charged in count 1 that Rogelio Banuelos committed “the crime of RECEIVING STOLEN PROPERTY, MOTOR VEHICLE WITH PRIOR, in violation of PENAL CODE SECTION 666.5, a Felony,” and Banuelos “did unlawfully buy and receive 1990 Nissan pick-up, . . . that was stolen and had been obtained in a manner constituting theft and extortion, knowing the property to be stolen” The information also alleged that Banuelos had three prior convictions, two under Penal Code section 487, subdivision (d)¹ and one under Vehicle Code section 10851. Count 2 charged Banuelos with felony receipt of stolen property in violation of section 496, subdivision (a) (a car stereo and taillights), and count 3 charged Banuelos with possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a). Banuelos pleaded no contest to count 1 and was sentenced to serve two years in county jail (the two other counts were dismissed).

Banuelos filed a petition for resentencing pursuant to Proposition 47 on December 22, 2014, checking the box listing his conviction as a felony conviction of section 666, petty theft with a prior, and requesting that his conviction be designated a misdemeanor pursuant to section 1170.18, subdivisions (a)–(e). The prosecution responded that Banuelos was ineligible for resentencing because he pleaded guilty to a violation of section 666.5, which was not listed in Proposition 47. At the hearing the same day, Banuelos’s attorney acknowledged that section 666.5 was not listed in Proposition 47, but argued that it should have been listed and the court should liberally construe the statute. Counsel contended the 1990 pickup’s “value is likely to be under \$950,” and it violated equal protection to treat Banuelos differently from someone convicted of petty theft simply because the stolen property was an automobile. The prosecutor responded that the Legislature had designated the theft of vehicles as a separate offense, including the receiving of a stolen vehicle. Section 666.5 targeted recidivism, and the drafters of Proposition 47 specifically did not include section 666.5.

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

The court agreed with the prosecutor, and denied Banuelos's petition. Banuelos filed this timely appeal.

Proposition 47, enacted by the voters in November 2014, added section 1170.18, which provides: "A person currently serving a sentence for a conviction . . . of a felony . . . who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense may petition for a recall of sentence . . . to request resentencing in accordance with Sections . . . 490.2, 496, or 666 . . . , as those sections have been amended or added by this act." (§ 1170.18, subd. (a); see *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, 1092.) Sections 490.2 and 496, subdivision (a) provide that obtaining by theft or receiving stolen property whose value does not exceed \$950 may be punished as a misdemeanor. Section 666, subdivision (a) provides that any person with a prior violent or serious felony conviction "who, having been convicted of . . . auto theft under Section 10851 of the Vehicle Code . . . , and having served a term of imprisonment therefor in any penal institution . . . and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison."

Section 666.5 is not among the statutes listed as amended or added by Proposition 47. Subdivision (a) of section 666.5 provides: "Every person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code [theft and unlawful driving or taking of a vehicle], or felony grand theft involving an automobile in violation of subdivision (d) of Section 487 . . . , or a felony violation of Section 496d regardless of whether or not the person actually served a prior prison term for those offenses, if subsequently convicted of any of these offenses shall be punished by imprisonment pursuant to subdivision (h) of section 1170 for two, three, or four years" Section 666.5 increases the base term for recidivists, and "[t]he 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; *People v. Demara* (1995) 41 Cal.App.4th 448, 453.) Banuelos pleaded no contest to the violation of section 666.5 alleged in count 1, which listed his three prior convictions, one of Vehicle Code

section 10851 and two of section 487, subdivision (d). He was not charged with, and did not plead to, any statute designated by Proposition 47 under which he would be eligible for resentencing to a misdemeanor. Banuelos therefore is not someone “who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense.” (§ 1170.18, subd. (a).) The trial court was correct to rule that Banuelos was ineligible for resentencing under Proposition 47.

DISPOSITION

The order is affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.