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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. RONALD RENTERIA, Defendant and Appellant.	B270081 (Los Angeles County Super. Ct. No. KA500014)

APPEAL from an order of the Superior Court of Los Angeles County, Wade D. Olson, Judge. Affirmed.

David R. Greifinger, 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, Assistant Attorney General, Mary Sanchez and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

This is another case involving resentencing under Proposition 47, enacted by voters in the General Election in November 2014. As relevant here, "Proposition 47, which is codified in [Penal Code] section 1170.18,[1] reduced the penalties for a number of offenses. Among those crimes are certain second degree burglaries where the defendant enters a commercial establishment with the intent to steal. Such offense is now characterized as shoplifting as defined in new section 459.5." (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879 (*Sherow*).) Under section 1170.18, subdivision (f), "[a] person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors."

In 1992, defendant Ronald Renteria was charged with one count of second degree burglary (§ 459) and one count of hit and run causing injury (Veh. Code, § 20001, subd. (a)) with two prison priors. He pled guilty in 1994 and the court sentenced him to two years in state prison and struck the priors. According to the probation report prepared for his sentencing, he and four others burglarized a furniture store during the 1992 Los Angeles riots. After they loaded furniture onto the back of defendant's truck, he sped away. He was involved in a traffic collision and fled the scene. Ten people were seriously injured. The probation report indicated a spokesperson for the furniture store stated the

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1 All undesignated statutory citations are to the Penal Code.

"damages and loss of property to the store" amounted to approximately $4,877.

On December 4, 2015, defendant filed a form petition requesting reclassification of his felony second degree burglary conviction as a misdemeanor pursuant to section 1170.18, subdivisions (a) and (f). Defendant did not submit any evidence of value of the property involved. The trial court held a hearing on January 25, 2016, and denied the request. The court stated: "Hit and run. The Prop. 47 does not apply to that. [¶] And count 1 is a second degree burglary. My understanding it is over $950." The deputy district attorney responded, "Yes." The court ruled, "Being it is over the $950 limit the matter is denied *without prejudice*." (Italics added.) The minute order for the hearing stated that the petition was "denied" but said nothing about whether the denial was with or without prejudice. The minute order noted, "The people indicate that the loss in count 01 is over four thousand dollars and count 02 is not an eligible charge under Proposition 47."

Defendant appeals, asking us to affirm the court's order without prejudice to him filing a new petition with supporting evidence of the value of the property taken. We will do so because that is what the trial court appears to have intended.

Prior to defendant filing his petition in this case in December 2015, at least two published opinions held the petitioner bears the initial burden to show eligibility for resentencing under Proposition 47. (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449 [decided Oct. 16, 2015]; *Sherow, supra*, 239 Cal.App.4th at p. 880 [decided Aug. 11, 2015].) Decisions published after his petition have followed suit. (*People v. Johnson* (2016) 1 Cal.App.5th 953, 964 (*Johnson*) [decided

July 26, 2016]; *People v. Bush* (2016) 245 Cal.App.4th 992, 1007 [decided Mar. 22, 2016]; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136 (*Perkins*) [decided Jan. 25, 2016].) As the court in *Sherow* explained, "[a] proper petition could certainly contain at least [the defendant's] testimony about the nature of the items taken." (*Sherow, supra*, at p. 880.) In *Johnson*, the court clarified a defendant is not limited to the record of conviction in carrying the initial burden and may "present evidence of facts *from any source*" to establish eligibility for resentencing. (*Johnson, supra*, at p. 968.)

Even though cases predating defendant's petition placed the burden on him to submit evidence of value, and *Sherow* suggested he could submit his own testimony, defendant presented no evidence of value. This was crucial because the probation report contained evidence that the value of the "damages and loss of property" was over $4,000, well beyond the $950 cap for misdemeanor shoplifting under section 459.5.

Defendant asks for another opportunity to present evidence because the form he filed did not indicate he had to submit evidence. He likens his "plight" to that of the defendants in *Sherow*, *Perkins*, and *Johnson*. Those cases are to some extent distinguishable because the defendants were unaware of their initial burden or need to present evidence when they filed their original petitions. (See *Perkins, supra*, 244 Cal.App.4th at pp. 139-140 [noting Prop. 47 is silent on burdens, the form at issue did not inform defendant he had to submit evidence, and the "ground rules were unsettled" at the time of initial petition];

see also *Johnson, supra*, 1 Cal.App.5th at pp. 970-971 [relying on reasoning in *Perkins* to deny petition without prejudice].)[2]

Nonetheless, we will affirm without prejudice because the trial court's oral pronouncement indicated it was denying his petition without prejudice, signaling it would allow him to file a properly supported petition. Respondent urges us to interpret the record as a denial *with prejudice* because the minute order of the hearing indicated the petition was simply "denied" and omitted the phrase "without prejudice." But we generally follow the court's oral pronouncement, which prevails over any discrepancy in a minute order. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) We also think it fair to give defendant another chance to file a properly supported petition, given the still-evolving nature of the burdens under Proposition 47 at the time he filed his first petition.

The court's order denying defendant's petition is affirmed without prejudice to defendant filing a properly supported petition.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J. GRIMES, J.

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[2] *Sherow* did not state a specific reason for affirming denial of defendant's petition without prejudice, but having allocated the burden to the petitioner to show initial entitlement to relief, fairness dictated giving the petitioner in that case a chance to file a properly supported petition.