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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY FABRICANT,

Defendant and Appellant.

B299084

(Los Angeles County
Super. Ct. No. A105194)

THE COURT:

Danny Fabricant (defendant) appeals from the orders denying his Proposition 47 petition for reduction of a felony conviction to a misdemeanor and his motion for discovery. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. After we notified defendant of his counsel's brief and gave him leave to file his own brief or letter stating any grounds or argument he might wish to have considered, defendant filed a supplemental brief and "Appellant's Supplemental Excerpts of Record," containing copies

of documents relating to prior proceedings. We have reviewed the entire record, including defendant's brief and the additional documents provided by defendant, and finding no arguable issues, we affirm the order.

In February 2019, defendant submitted a petition pursuant to Penal Code section 1170.18 (Proposition 47), to reduce a 1968 conviction to a misdemeanor.¹ The petition alleged that in 1968 defendant was convicted of a felony violation of Vehicle Code section 10851, and that he had no prior convictions disqualifying him from the requested relief. With the petition defendant filed a motion for an order directing the Los Angeles County Probation Department to turn over copies of probation reports regarding the subject conviction, as well as probation reports in two other cases which defendant intended to make future Proposition 47 petitions. The motion also sought an order directing the clerk of the court or the Sheriff's Department civil division to provide him with two sets of subpoena duces tecum and affidavit forms with instructions, in order to obtain unspecified discovery.

In his verified memorandum of points and authorities supporting the petition defendant explained that the prior copies of probation reports provided to him were defective and that the Probation Department should have better copies. Attached to the memorandum were copies of such previously provided probation reports dated November 12, 1968, and August 12, 1969. The memorandum also explained that the subpoena forms were

¹ A felony conviction of taking or driving a vehicle in violation of Vehicle Code section 10851 is subject to Proposition 47 relief if the vehicle was worth \$950 or less and the sentence was imposed for theft of the vehicle. (*People v. Page* (2017) 3 Cal.5th 1175, 1187.)

needed in order to obtain from the Kelly Blue Book Company copies of Kelly Blue Books that would list the values of used 1960 Chevrolet pick-up trucks in 1968.²

By notice on April 17, 2019, the trial court set a hearing for April 26, 2019. On that date the trial court denied the petition due to insufficient evidence of the value of the stolen property. The court also denied the motion for issuance of (discovery) orders. Defendant filed a timely notice of appeal from the court's order.

In his supplemental brief, defendant explains that he did not check the box on the Proposition 47 form to indicate that the value of the property was \$950 or less, because the form states that the box is limited to Penal Code offenses only, and his offense was a Vehicle Code violation. Defendant also states that he filed a previously denied Proposition 47 petition regarding the subject conviction and two others in January 2015, as well as a prior motion for probation reports which was denied. Defendant states that the probation reports were eventually provided after the Supreme Court ordered this court to issue an alternative writ to the superior court. Defendant has provided documents related to his prior motions, including this court's order of October 19, 2018, dismissing an appeal from a superior court order denying one such motion in *People v. Fabricant*, B292940. Defendant has

² A criminal defendant may obtain discovery from third parties and private parties when it reasonably appears in the application that specified materials sought will assist him in preparing a defense, and he demonstrates good cause by furnishing a “‘plausible justification’ for inspection,” such as an inability to obtain the information on his own. (*Pacific Lighting Leasing Co. v. Superior Court* (1976) 60 Cal.App.3d 552, 566 & 567.)

also provided a copy of another request for copies of probation reports in the three convictions, as well as the order denying it on February 5, 2019. The grounds for denial being that all available materials had been provided and that there was no pending Proposition 47 petition.

Defendant does not dispute that he was provided with the available materials, rather he states that copies were taken from microfilm and were defective in that some lines were not included. Defendant contends that the superior court did not rule on his motion for issuance of orders, and that for this reason the court prematurely denied the instant Proposition 47 petition. The trial court's order however states that the court had reviewed all submitted documents and archived case records, and that both the petition and the motion were denied.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The order is affirmed.

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LUI, P.J.

CHAVEZ, J.

HOFFSTADT, J.