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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

HOGAN ISHMAEL SIMUEL, JR.,

Defendant and Appellant.

B287915

(Los Angeles County
Super. Ct. No. YA040398)

APPEAL from an order of the Superior Court of
Los Angeles County, William C. Ryan, Judge. Affirmed.

Michael Allen, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Hogan Ishmael Simuel petitioned to recall his current felony sentence for receiving stolen property and for resentencing as a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18). The trial court denied the petition, finding Simuel's conviction did not qualify for resentencing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 1999 Simuel entered a residence, ransacked the interior, and left with a laptop computer, videocassette recorder, videocassettes, \$6 in coins, and a VCR remote control device. A jury convicted Simuel of receiving stolen property (Pen. Code, § 496), a felony, and found true allegations he had three prior convictions for serious or violent felonies within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and had served five prison terms for felonies within the meaning of Penal Code section 667.5, subdivision (b). The trial court sentenced Simuel to a prison term of 25 years to life. (*People v. Simuel* (Nov. 20, 2000, B137316) [nonpub. opn.])

On June 2, 2015 Simuel filed his petition under Proposition 47 for recall of his sentence and a new sentencing hearing. On June 9, 2015 the trial court issued an order to show cause, and the People filed opposition on October 5, 2015. The court held a hearing on December 11, 2017.¹

¹ On December 12, 2012 Simuel filed a petition to have his sentence recalled and for resentencing under Proposition 36 (Pen. Code, § 1170.126). On February 19, 2013 the trial court issued an order to show cause, and on April 5, 2013 the People filed opposition and a request for Simuel's mental health records.

The primary issue at the hearing was whether Simuel had met his burden to show the value of the stolen items did not exceed \$950. In support of his petition, Simuel submitted a series of classified ads published between January 1998 and October 1999 in California, Virginia, and Australia for laptops, VCRs, and transistorized portable music players (known as “boom boxes”). Simuel urged the trial court to use the average of the various advertised values, which Simuel calculated was \$895.54, as the fair market value of the stolen items.

Over Simuel’s objection, the People submitted a police report, which assigned a value to each stolen item. The People argued the trial court should use the total of these values, which the prosecutor calculated was \$1,205.97, as the value of the stolen items.

The trial court sustained Simuel’s hearsay objection to the police report. The court concluded, however, Simuel had failed to meet his burden to show the value of the stolen items was \$950 or less. Specifically, the court found there was insufficient evidence of the specifications and condition of the stolen laptop, the most expensive item stolen. Without this information, the court ruled it was unable to determine which of the advertised laptops was similar to the stolen laptop and therefore had the same value. The court denied the petition. Simuel filed a timely notice of appeal.

Simuel originally filed his Proposition 47 petition on November 6, 2014, which the trial court denied without prejudice. As stated, Simuel filed this petition on June 2, 2015. The People’s October 5, 2015 opposition to Simuel’s refiled Proposition 47 petition included their opposition to Simuel’s Proposition 36 petition. The December 11, 2017 hearing, however, concerned only Simuel’s eligibility for resentencing under Proposition 47.

DISCUSSION

We appointed counsel to represent Simuel on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On August 6, 2018 we advised Simuel he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied appellate counsel for Simuel has complied with his responsibilities and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.