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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. PETER SUGGS, Defendant and Appellant.	B269615 (Los Angeles County Super. Ct. No. BA039553)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, §6 of the Cal. Const.) Affirmed with directions.

Melissa L. Camacho-Cheung, 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, Victoria B. Wilson, Mary Sanchez and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

On June 25, 1991, defendant, Peter Suggs, pled guilty to a felony violation of Penal Code, former section 496, subdivision (1), receiving stolen property, an automobile.[1] Defendant was sentenced to two years in state prison. Defendant has completed that sentence. On August 28, 2015, defendant filed a form petition to designate his conviction a misdemeanor. (§ 1170.18, subd. (f).) We affirm the denial order without prejudice.

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[1] Further statutory references are to the Penal Code unless otherwise noted. In 1991, section 496, subdivision (1) provided: "Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year; provided, that where the district attorney or the grand jury determines that such action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars ($400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in the county jail not exceeding one year." (Stats. 1982, ch. 935, § 1, p. 3393.)

II. PROCEEDINGS IN THE TRIAL COURT

A. The Petition

As noted above, on August 28, 2015, defendant filed a form petition to designate his conviction a misdemeanor. (§ 1170.18, subd. (f).) In his petition, defendant averred he had been convicted of "Penal Code § 496(a) Receiving Stolen Property, Value <$951." The petition did not include any evidence as to the value of the stolen automobile.

B. The Trial Court's Ruling

The trial court denied the petition. A hearing was held and defendant, who was not present, was represented by Deputy Public Defender Leslie Stearns. The entirety of the reporter's transcript of the hearing states: "The Court: Peter Suggs matter. [¶] Prop. 47 motion is denied. Penal Code section 496(1) involving an automobile is not eligible. It remains a felony." The minute order states: "Matter is called for hearing. [¶] The court has read and considered the defendant's application [¶] pursuant to [P]roposition 47 and finds the defendant is not eligible for a reduction pursuant to [P]roposition 47. [¶] The felony conviction is for an offense that does not qualify under [P]enal [C]ode section 1170.18 ([a]) or (f). [¶] The conviction remains a felony. [¶] The application is denied."

III. DISCUSSION

A. Defendant's Burden

Section 1170.18, subdivision (f) states, "A person who has completed his or her sentence for a conviction . . . 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 . . . to have the felony conviction or convictions designated as misdemeanors." (Italics added.) Section 1170.18, subdivision (a) provides receiving stolen property valued at less than $951 in violation of section 496 is now a misdemeanor. Section 496 now provides, "(a) Every person who buys or receives any property that has been stolen . . . knowing the property to be so stolen . . . shall be punished . . . . However, *if the value of the property does not exceed nine hundred fifty dollars($950), the offense shall be a misdemeanor* . . . ." (Italics added.)

It was defendant's burden to prove his eligibility to have his felony offense designated a misdemeanor. (Evid. Code, § 500; *People v. Sauceda* (2016) 3 Cal.App.5th 635, 647, fn.3; *People v. Pak* (2016) 3 Cal.App.5th 1111, 1117; *People v. Maynarich* (2016) 248 Cal.App.4th 77, 80.) To that end, as the Courts of Appeal have repeatedly held, it was defendant's burden to establish that the stolen vehicle was worth not more than $950. (*People v. Johnson* (2016) 1 Cal.App.5th 953, 961; *People v. Bush* (2016) 245 Cal.App.4th 992, 1007-1008; *People v. Perkins* (2016) 244

Cal.App.4th 129, 136-137; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880.) Defendant so alleged in his petition. But he offered no evidence in support of that claim. As a result, the trial court's denial order must be affirmed. (*People v. Perkins, supra,* 244 Cal.App.4th at pp. 137, 141-142; *People v. Rivas-Colon, supra,* 241 Cal.App.4th at pp. 449-450; *People v. Sherow, supra,* 239 Cal.App.4th at pp. 880-881.)

Circumstantially, it does appear that the vehicle was in working order. The victim had parked and locked her car in front of her house. She discovered it missing the following morning. The victim retrieved the car from an impound yard. She was subsequently interviewed by a law enforcement officer at her home. At that time, the vehicle was parked in the victim's driveway. The officer who arrested defendant and recovered the vehicle found a key in defendant's pocket. The officer used that key to start the stolen car without any difficulty. This is not sufficient evidence, however, from which we can confidently conclude the trial court impliedly found the vehicle was worth more than $950.

Defendant urges this court to disagree with existing authority and to impose the initial eligibility determination—with respect to the value of the property—on the People. However, we agree with the existing authority, cited above, that the burden rests with defendant. Defendant also advocates that we adopt the least punishable offense presumption for prior convictions established in *People v. Guerrero* (1988) 44 Cal.3d 343, 352.

We are not persuaded. *Guerrero* is procedurally and factually inapposite. (*People v. Johnson, supra,* 1 Cal.App.5th at p. 967, fn. 14; see *People v. Newman* (2016) 2 Cal.App.5th 718, 726-727 [construing § 1170.126, subd. (e)(2)].)

B. Section 496d

The crime of receiving a stolen vehicle is currently codified in section 496d. Section 469d was added to the Penal Code in 1998, seven years after defendant's offense. (Stats. 1998, ch. 710, § 1, p. 4736.) Section 469d makes a violation punishable as either a felony or a misdemeanor. The Attorney General argues the trial court likely denied defendant's petition because section 496d is not one of the offenses that Section 1170.18, subdivision (a) reduced to a misdemeanor. The Attorney General concedes, however, that, "[T]he plain language of [Section 1170.18, subdivision (a)] seems to support the notion that relief is available to individuals for crimes enumerated in the initiative even if the definitions of those crimes have changed." We agree. Defendant was not convicted under section 496d because the statute did not exist at the time he committed his offense (or when he entered his plea). He was convicted under section 496, an offense Section 1170.18, subdivision (a) reduced to a misdemeanor with respect to stolen property of a specified value. The fact that defendant could have been charged under section 496d had he committed his offense after 1998 is irrelevant.

C. Affirmance Without Prejudice

Defendant asks that we affirm the trial court's denial order without prejudice so that he may file another petition. At the time defendant filed his petition, in August 2015, it was not clear it was defendant's burden to produce evidence the stolen property, the automobile, was worth less than $951. (*People v. Johnson, supra,* 1 Cal.App.5th at pp. 970-971; *People v. Perkins, supra,* 244 Cal.App.4th at pp. 139-140.) The Attorney General concedes, "Assuming this Court affirms the denial of the application solely on the basis of [defendant's] failure to prove the value of the vehicle (rather than on the trial court's reasoning that the crime is inherently ineligible because it involved an automobile), then there does not appear to be any procedural impediment to [defendant] filing a successive Proposition 47 application with adequate evidence." Accordingly, the trial court's denial order is affirmed without prejudice to consideration of a subsequent petition.

IV. DISPOSITION

The order is affirmed without prejudice to consideration of a subsequent petition.

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TURNER, P.J.

We concur:

BAKER, J.

KIN, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.