Filed 10/31/19 P. v. Mountford CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DAVID GORDON MOUNTFORD, Defendant and Appellant.	B286655 (Los Angeles County Super. Ct. No. GA065015)

APPEAL from an order of the Superior Court of Los Angeles County, Cathryn F. Brougham, Judge. Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

This is defendant David Gordon Mountford's fourth appeal challenging the trial court's denial of a petition for resentencing and/or reclassification under Proposition 47 (Pen. Code, § 1170.18).[1] In our opinion addressing the first two appeals (*People v. Mountford* (Mar. 28, 2019, B286803, B287202) [nonpub. opn.] (*Mountford I*)), we held that Mountford's 2010 and 2015 identity theft convictions in violation of section 530.5, subdivisions (a) and (c)(2), and offering a false or forged instrument in violation of section 115, subdivision (a), were ineligible for resentencing under Proposition 47. In our second opinion (*People v. Mountford* (May 28, 2019, B287245) [nonpub. opn.] (*Mountford II*)), we held that Mountford's 2011 convictions of possession of a forged driver's license (§ 470b) and forgery (§ 470, subd. (a)) were ineligible for relief under Proposition 47.

In this appeal, Mountford challenges the trial court's failure to grant his Proposition 47 petitions regarding his 2006 convictions of driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)) and identity theft (§ 530.5, subd. (a)). He contends the trial court failed to rule on his petition to reclassify his identity theft conviction. He further contends that he made a prima facie showing the value of the stolen vehicle was $950 or less, and the trial court therefore erred in denying his request for Proposition 47 relief as to the Vehicle Code conviction. For the reasons explained below, we affirm the denial of the petitions for reclassification.

---

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

BACKGROUND

On January 26, 2006, Mountford rented a car from Advantage Rent-A-Car using Edward Berkovitz's credit card and identity. Berkovitz told law enforcement officers he had lost his wallet. He did not know Mountford and had not given Mountford permission to use his identification or credit card to rent a vehicle.

Mountford went to a Staples store, where he paid for a purchase with a counterfeit $100 bill. When store employees confronted him, he attempted to retrieve the counterfeit bill and then fled. Mountford returned on a later date and attempted to return the merchandise he had purchased for cash. Store employees called law enforcement, who detained Mountford. He identified himself as Matthew Hutchinson.

When Mountford was arrested, he had in his possession completed checks in Berkovitz's name, a credit card in Berkovitz's name, and various other fraudulent and stolen documents and items.

On May 3, 2006, pursuant to a plea agreement, Mountford pleaded guilty to driving or taking a vehicle without the owner's consent (count 3) and fraudulent use of personal identifying information (count 7). He was sentenced to concurrent upper terms of three years in state prison.

On April 18, 2017, Mountford filed a petition to reduce his driving or taking a vehicle conviction to a misdemeanor under Proposition 47. On October 16, 2017, Mountford filed a second Proposition 47 petition as to his conviction for fraudulent use of personal identifying information. The People opposed both petitions.

Mountford did not appear at the November 17, 2017 hearing on his petitions.[2] The prosecutor indicated that Mountford pleaded guilty to a Vehicle Code section 10851 violation, which the prosecutor said was an offense not eligible for Proposition 47 relief. The prosecutor then added "[a]nd even if it were [eligible for relief], it is a 2006 case and he stole 2005 and drove a 2005 Chrysler convertible, which is way over." The trial court asked: "So, it is a newer car, you are saying value?" The prosecutor responded: "Yes. So, either way, that was an argument to be presented." The trial court found that Mountford "does not qualify. So, the [petition] is denied." The transcript does not indicate the court addressed the identity theft conviction during the hearing, but the minute order for the hearing states that the trial court found Mountford was not eligible to have either count 3 or count 7 reduced to a misdemeanor.

DISCUSSION

A. Identity Theft Under Section 530.5, Subdivision (a)

Mountford contends the trial court erred in failing to rule on his Proposition 47 petition as to his identity theft conviction.

---

[2] Mountford indicated on his applications that he had completed his sentences for the 2006 Vehicle Code and identity theft offenses, but it appears he may have been incarcerated on an unrelated offense at the time of the hearing. Under Proposition 47, the nomenclature for a person petitioning to change a previously sentenced crime from a felony to a misdemeanor depends on whether that individual is still serving a sentence for that crime. An individual still serving a sentence petitions for resentencing, whereas a person who has completed the sentence imposed instead seeks reclassification. (Couzens et al., Sentencing California Crimes (The Rutter Group 2018) § 25:5.)

While Mountford is correct the court did not address that request in open court, it did address the petition in its minute order. The procedure for obtaining reclassification under Proposition 47 "is designed to be simple and, wherever possible, avoid the need for formal court hearings." (Couzens et al., Sentencing California Crimes, *supra*, § 25:14.) Section 1170.18, subdivision (h), expressly authorizes the court to either grant or deny an application for reclassification without hearing unless one is requested by the applicant, and Mountford's application did not request a hearing.

The court's minute order addressed the request to reclassify the identity theft conviction, and stated it was denied. Even if we assume the trial court did not properly make that ruling, remand would be an idle act because, in our view, the petition should have been denied. In *Mountford I*, we held that fraudulent use of personal identifying information and fraudulent possession of personal identifying information in violation of section 530.5, subdivisions (a) and (c)(2), were not theft offenses and therefore did not fall within the purview of Proposition 47. We reaffirmed that holding in *Mountford II*. Nothing has changed since these two opinions, and we decline to revisit the issue for Mountford's 2006 conviction for the same type of conduct.[3]

---

[3] We note that the issue of whether identity theft in violation of section 530.5 is eligible for resentencing or reclassification under Proposition 47 is currently before our Supreme Court. (See *People v. Brayton* (2018) 25 Cal.App.5th 734, review granted Oct. 10, 2018, S251122; *People v. Jimenez* (2018) 22 Cal.App.5th 1282, review granted July 25, 2018,

B. Driving or Taking a Vehicle Under Vehicle Code Section 10851

At the hearing on Mountford's petition, the prosecutor initially contended a Vehicle Code section 10851 conviction was not eligible for relief under Proposition 47. Two weeks after the trial court denied Mountford's petition, the Supreme Court in *People v. Page* (2017) 3 Cal.5th 1175 (*Page*) held that convictions under Vehicle Code section 10851 are in fact eligible for resentencing under Proposition 47 if (1) the sentence was imposed for theft rather than posttheft driving of the vehicle, and (2) the vehicle was worth $950 or less. (*Id*. at p. 1188.)

While Mountford claims the sole basis on which his petition for classification was denied was a pre-*Page* argument his offense was categorically ineligible, the record indicates otherwise. The prosecutor contended in the alternative that even if the Vehicle Code conviction was eligible, Mountford did not qualify for relief because the rap sheet indicated Mountford stole a 2005 Chrysler, indicating the value of the stolen vehicle was worth more than $950. The trial court agreed that Mountford did not qualify for relief, but did not expressly state on which ground(s) it was relying.

Citing *People v. Perkins* (2016) 244 Cal.App.4th 129, the People assert Mountford failed to establish a prima facie entitlement to relief by failing to demonstrate that his offense did not involve posttheft driving, and the value of the stolen property was not more than $950. In *Perkins*, a defendant filled out a Riverside County Superior Court form for requesting

---

S249397; *People v. Sanders* (2018) 22 Cal.App.5th 397, review granted July 25, 2018, S248775.)

resentencing under Proposition 47, but did not attach evidence or record citations to support his claim the value of the stolen property did not exceed $950. (*Perkins*, *supra*, at p. 135.) *Perkins* held the resentencing petition was properly denied because the defendant's petition failed to include such evidence. (*Id.* at p. 139.) *Perkins* acknowledged, however, that the Riverside County court form may have misled the defendant about the necessary support for his petition, because it included no space for and no directions to include evidence or information about the value of the stolen property. (*Id.* at pp. 139-140.)

In *People v. Washington* (2018) 23 Cal.App.5th 948 (*Washington*), Division Eight of this district took issue with the approach of *Perkins*, and we find *Washington*'s reasoning persuasive. In *Washington*, the People argued that the defendant failed to meet his prima facie burden of showing that the value of the stolen property did not exceed $950, because he failed to submit a declaration, court documents, or record citations regarding the value of the stolen property. (*Washington*, *supra*, at pp. 954-955.) The court rejected this position, holding a defendant may meet his or her initial burden by affirmatively stating that the value of the property involved did not exceed $950. (*Id.* at p. 955.)

In reaching its holding, the court "note[d] that the Los Angeles Superior Court has adopted a half-page form for Proposition 47 petitioners. The form requires the petitioner to sign a statement informing the court of (1) the felony of which he was convicted, and (2) the date of his conviction. The form also gives the petitioner the option of checking a box stating, 'The amount in question is not more than $950.' The form does not provide space for a petitioner to write in additional information

about the stolen property, nor does it indicate that the petitioner is required to, or even may, attach any evidence to the form. . . . [¶] . . . To adopt [the People's] argument would effectively nullify the Los Angeles Superior Court's efforts to process Proposition 47 petitions. No petitioner could meet the prima facie burden without crafting his or her own petition in derogation of the form adopted by the court, or modifying the official form to include handwritten statements in the margins or by attaching additional paperwork." (*Washington*, *supra*, 23 Cal.App.5th at p. 955, fn. omitted.)

The People seek to distinguish *Washington* on the grounds that the defendant in that case was in propria persona, whereas Mountford was represented. The fact Mountford was represented, however, does not change the nature of the Los Angeles County Superior Court form, and the inability of a defendant (with or without counsel's assistance) to craft a petition in derogation of the form adopted by the court. Mountford's form referenced the Vehicle Code felony of which he was convicted, and represented the amount in question was not more than $950. In accord with *Washington*, we find Mountford made the required prima facie showing of eligibility for relief as the fair inference from the petition is that he was contending the offense involved vehicle theft (not posttheft driving) of a car valued at no more than $950.

That, however, is not the end of the analysis. After the defendant files his or her petition, additional documentation or evidence may be presented by the parties relevant to the determination of whether the defendant meets the statutory requirements for reclassification. (Couzens et al., Sentencing California Crimes, *supra*, § 25:14.) While the scope of evidence

admissible to prove or disprove the petitioner's eligibility for resentencing is not defined by the statute, a court can consider any documentary evidence that is part of the record of conviction—that is, those record documents reliably reflecting the facts of the offense for which the defendant has been convicted, including the charging document and plea. (*Ibid*.; see also *Page*, *supra*, 3 Cal.5th at p. 1189 [court can determine eligibility "from the record of conviction"].)

In *Washington*, the record indicated only that the defendant had unlawfully purchased unknown items in unknown quantities of unknown value from a Nordstrom store. (*Washington*, *supra*, 23 Cal.App.5th at p. 952.) The court accordingly remanded the matter, noting "[i]f the prosecution chooses to oppose a Proposition 47 petition on the ground the value of the stolen property exceeds $950, *and this fact is not established by the record of the initial plea or conviction*, the superior court should then hold an evidentiary hearing at which the value of the property taken may be considered." (*Id*. at p. 957, italics added.)

Here, in contrast, the record of conviction clearly set forth the stolen property—a 2005 Chrysler automobile. Giving Mountford the benefit of the doubt that his offense did not involve posttheft driving even though he pled to a count alleging that he possessed the vehicle for over three and a half weeks, there was no reasonable possibility the value of a 2005 Chrysler automobile was $950 or less when Mountford stole it in 2006. (*People v. Romanowski* (2017) 2 Cal.5th 903, 916 [evidentiary hearing required only if, after considering record evidence, " 'there is a reasonable likelihood that the petitioner may be

entitled to relief' "].)[4] The trial court accordingly did not err in relying on facts within the conviction record to deny relief without holding an evidentiary hearing.

DISPOSITION

The denial of Mountford's requests to reclassify his 2006 identity theft and Vehicle Code section 10851 convictions is affirmed.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

---

[4] We reject Mountford's contention that the People were further required to obtain and provide a written estimate of value or disprove theoretical possibilities such as whether the car was free from prior collisions or other matters decreasing its value. The burden in a reclassification hearing is not on the People to prove value beyond a reasonable doubt, and there was not a reasonable likelihood that a late model car rented by a reputable rental car agency was a heavily damaged clunker.

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