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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.

RAYMOND JAVIER
GARCIA,

Defendant and
Appellant.

B288039

(Los Angeles County
Super. Ct. No. VA025982)

APPEAL from judgment of the Superior Court of Los Angeles County, Debra A. Cole, Judge. Reversed.

Stephen Borgo, 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, Senior

Assistant Attorney General, Chung L. Mar and Christopher G. Sanchez, Deputies Attorney General, for Plaintiff and Respondent.

Defendant Raymond Javier Garcia appeals an order denying his petition to reduce his 1993 felony conviction for receiving stolen property (Pen. Code, § 496)¹ to a misdemeanor pursuant to Proposition 47 (§ 1170.18, subd. (f)). The trial court denied Garcia’s petition without prejudice on the basis that he was ineligible for relief because he failed to provide any evidence that the value of the stolen property did not exceed \$950, as required to establish eligibility under section 1170.18.

Garcia contends he made a prima facie case that he is eligible for relief under section 1170.18, subdivision (f).

We agree that Garcia has met his initial burden of establishing eligibility.²

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

² Although the parties focus their arguments on whether Garcia made a prima facie case by checking the box indicating that the value of the stolen property was less than \$950—an issue upon which the Courts of Appeal disagree (see *People v. Washington* (2018) 23 Cal.App.5th 948, 955 [checking box indicating value of property is less than \$950 is sufficient to make prima facie showing]; *People v. Perkins* (2016) 244 Cal.App.4th 129, 140 [checking box indicating

DISCUSSION

Under Proposition 47, a felony conviction for receiving stolen property may be reduced to a misdemeanor where the value of the stolen property does not exceed \$950, and where, as here, the petitioner has no prior convictions for an offense specified in section 667, subdivision (e)(2)(C)(iv) or for an offense requiring registration pursuant to section 290, subdivision (c). (§§ 496, subd. (a); 1170.18, subds. (f)–(i).) “The ultimate burden of proving section 1170.18 eligibility lies with the petitioner. (See Evid. Code, § 500.)” (*People v. Romanowski* (2017) 2 Cal.5th 903, 916 (*Romanowski*).)

When a person files an application for relief under Proposition 47, the court conducts an initial screening. “The initial screening must be limited to a determination of whether the applicant has presented a *prima facie* basis for relief under section 1170.18. At this level of review, the court should not consider any factual issues such as the value of any property taken regarding any qualified theft crimes.’ (Couzens [et al.], Sentencing California Crimes [(The Rutter Group 2018)] § 25.14.)” (*People v. Washington* (2018) 23 Cal.App.5th 948, 953 (*Washington*).) “In some cases, the uncontested information in the petition and record

value of property is less than \$950 is not sufficient to make *prima facie* showing)]—we need not decide the issue here as Garcia submitted other evidence that was sufficient to make a *prima facie* case.

of conviction may be enough for the petitioner to establish this eligibility. When eligibility is established in this fashion, ‘the petitioner’s felony sentence shall be recalled and the petitioner sentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).) But in other cases, eligibility for resentencing may turn on facts that are not established by either the uncontested petition or the record of conviction. In these cases, an evidentiary hearing may be ‘required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner’s entitlement to relief depends on the resolution of an issue of fact.’ [Citations.]” (*Romanowski, supra*, 2 Cal.5th at p. 916.)

Procedural History

Garcia utilized the Superior Court of Los Angeles County form, and checked the box indicating that the value of the stolen property was less than \$950. Although the People express some doubt over whether the petition included attachments, the petition in the appellate record includes the Huntington Park Police Department’s Crime Report for the incident as an attachment, and we consider it as such. The crime report indicates that on October 3, 1993,

Huntington Park High School reported a burglary of shop tools. Officers observed Garcia exiting the high school with a large laundry bag and spilling tools on the sidewalk. When they questioned him, Garcia stated that he purchased the tools at a swap meet. As Garcia began placing the spilled tools back in the laundry bag, one of the officers noticed a tool inscribed with the words "Huntington Park High School." Garcia was arrested and taken to the police station. In a subsequent police interview, Garcia stated that he paid \$50 for the tools. He admitted that he believed the tools were stolen at the time of purchase because they "were worth much more than \$50."

The record does not contain a written opposition to the petition, nor is it alleged that the prosecution filed an opposition with the trial court.

At the hearing, the prosecutor requested that the trial court deny the petition without prejudice, and the following discussion took place:

"The Court: Let me just see if I --

"[Prosecutor]: I looked in the police report, and it doesn't give a value. It lists the different property that was taken. It was taken from a school. But he pled to receiving as opposed to a burglary. So we just look at the value.

"The Court: I don't have anything that --

"[Prosecutor]: There were tools.

"The Court: Probation report just says 'tools from the machine shop'. So at this time the request is denied without prejudice."

Analysis

The trial court's ruling that Garcia presented no evidence of the value of the stolen property in connection with his Proposition 47 petition is incorrect. At the eligibility stage, the court does not consider the actual value of the property taken, it assesses only whether the petitioner has presented evidence of the property's value demonstrating that it is reasonably likely the petitioner is eligible for relief. (See *Washington, supra*, 23 Cal.App.5th at p. 953.) Garcia has done so. His petition included the Huntington Park Police Department's Crime Report stating that he was stopped carrying a bag of shop tools for which he paid \$50, and listed the recovered items. The amount that Garcia claimed to have paid for the tools is evidence of their value. (*Romanowski, supra*, 2 Cal.5th at p. 916 ["we are aware of no jurisdiction that bars courts from looking at evidence of illegal market value. We see no reason to establish that restriction in California"].) The nature of the individual tools stolen detailed in the police report also indicates that their value is reasonably likely to be less than \$950. Under these circumstances, the record does not support affirming the order on the basis that defendant failed to carry his prima facie burden.

The petition in this case is the type described in *Romanowski*, where "eligibility for resentencing . . . turn[s] on facts that are not established by either the uncontested

petition or the record of conviction,” necessitating an evidentiary hearing if the petition is opposed. (*Romanowski, supra*, 2 Cal.5th at p. 916.) Accordingly, we reverse and remand for further proceedings. (*Ibid.*)

DISPOSITION

The order denying Garcia’s petition for reclassification of his felony conviction to a misdemeanor under section 1170.18 is reversed. If the District Attorney contests Garcia’s initial showing of eligibility, the trial court is directed to conduct an evidentiary hearing to determine whether Garcia has met his ultimate burden.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

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