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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS GARY JOHNSON,

Defendant and Appellant.

A144466

(Solano County  
Super. Ct. No. FCR237202)

In 2010, appellant Marcus Gary Johnson was convicted by a jury of felony possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a), and felony unlawful taking or possession of a vehicle in violation of Vehicle Code section 10851, subdivision (a). In December 2014, Johnson filed a petition for resentencing under Penal Code section 1170.18, subdivision (a) (Proposition 47) seeking to reclassify both crimes as misdemeanors. The trial court reclassified the drug offense, but declined to reclassify the vehicle offense.

Johnson appeals claiming that the trial court erred by concluding the Vehicle Code offense was not eligible for resentencing under Penal Code section 490.2, enacted as part of Proposition 47, and that its conclusion violates Johnson's rights to equal protection of the laws.

We need not address Johnson's statutory or constitutional arguments because he did not sustain his burden of proving the automobile he was convicted of taking was worth \$950 or less. Thus, even if we were to assume that a violation of Vehicle Code

section 10851 could be eligible for resentencing under Proposition 47, Johnson did not qualify for relief.<sup>1</sup> We affirm.

## DISCUSSION

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act. (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014).) The initiative aimed to “ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from” the Act in elementary and high school programs, victims’ services, and mental health and drug treatment. (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) Proposition 47 targets these goals in four ways: (1) it amends the Penal Code and Health and Safety Code to reduce certain property crimes and possessory drug offenses from felonies or wobblers<sup>2</sup> to misdemeanors; (2) it allows people serving felony sentences for newly-reduced offenses to ask the court to resentence them as misdemeanants (Pen. Code, § 1170.18, subds. (a), (b)); (3) it allows people who have finished serving a qualified felony sentence to ask the court to reclassify the conviction as a misdemeanor (Pen. Code, § 1170.18, subds. (f)-(h)); and (4) it creates a Safe Neighborhoods and Schools Fund to be financed with savings generated by the changes to the sentencing laws (Gov. Code, § 7599 et seq.). (Ballot Pamp., *supra*, text of Prop. 47, § 3, p. 70.)

“As relevant to the present case, though Proposition 47 purported to reduce the penalties for grand theft, it did not directly amend any substantive theft statute. (Ballot Pamp., *supra*, analysis of Prop. 47 by Legis. Analyst, p. 35 [‘Specifically, the measure reduces the penalties for the following crimes: [¶] Grand Theft.’].) Instead, the initiative added a new provision to the Penal Code chapter dealing with theft. (§ 490.2; see Pen. Code, § 484 et seq.) The new provision provides, ‘[n]otwithstanding Section 487 or any

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<sup>1</sup> To be clear, we do not intend to imply that a section 10851 offense can be eligible for resentencing under Proposition 47. That question is pending before the Supreme Court. (*People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150.)

other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor' unless the defendant has been convicted of a specified violent or serious crime. (§ 490.2.)” (*People v. Solis, supra*, 245 Cal.App.4th at pp. 1105.)

Johnson argues that a violation of Vehicle Code section 10851 is a form of theft within the scope of Penal Code section 490.2 as enacted by Proposition 47. As such, he argues the court should have reduced his conviction under section 10851 to a misdemeanor as provided in Penal Code section 1170.18, subdivision (a). Whether or not this is the case, in order for Johnson’s conviction under Vehicle Code section 10851 to qualify for relief, under section 490.2 the value of the stolen car must have exceeded \$950.

A petitioner seeking resentencing under Proposition 47 has the burden to prove his or her eligibility for relief. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 137.) When “the offense of conviction is a theft crime reclassified based on the value of the stolen property . . . [t]he defendant must attach information or evidence necessary to enable the court to determine eligibility.” (*Ibid.*) Johnson’s petition is bare bones and provides no factual basis for the court to determine the value of the stolen automobile. It states simply he was convicted of offenses now reclassified as misdemeanors. There are no citations to the record of his trial or statements about the value of the stolen property. A proper petition should contain at least Johnson’s testimony about the stolen item. (See *People v. Sherow* (2015) 239 Cal.App.4th 875, 880.)

Here, when the court considered the petition, Johnson’s lawyer stated that the only reference he could find in the record regarding the value of the stolen vehicle was a statement, apparently attributed to Johnson in a police report that was not admitted into evidence, that Johnson wanted to buy the car for \$500. But Johnson’s trial testimony stated he had an agreement with the victim to buy the car for \$1,500. The victim’s testimony also shows that the victim paid \$3,000 for the car six months before Johnson took it and was still making payments on it when he testified in the trial. On the basis of

this conflicting evidence of value, we have no difficulty concluding that Johnson cannot meet his burden of showing the conviction under section 10851 qualified for Proposition 47 relief.

DISPOSITION

The order is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.