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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT DEAN LONG, SR.,

Defendant and Appellant.

A145455

(Marin County Super. Ct.
No. SC147932A & SC155409A)

Defendant Albert Dean Long, Sr., appeals from the trial court’s denial of his petition under Proposition 47¹ to have two of his convictions reclassified as misdemeanors. Defendant was convicted, following guilty pleas, of two counts of grand theft (Pen. Code, § 487, subd. (a))² and three counts of receipt of stolen property (§ 496, subd. (a)). After voters enacted Proposition 47 (§ 1170.18), defendant petitioned to reduce his convictions to misdemeanors. The trial court denied his petition as to count 1 (grand theft of computers and computer equipment) and count 3 (receipt of stolen computers and equipment), concluding defendant was not eligible for resentencing because the value of the property involved exceeded \$950.

Defendant contends the trial court erred in denying his petition and asserts he proved by a preponderance of the evidence the value of the computers and equipment

¹ “On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (hereafter Proposition 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.)

² All further statutory references are to the Penal Code unless otherwise indicated.

was less than \$950. He additionally contends, and the People agree, that the abstract of judgment should be amended to reflect the nonviolent nature of two of his offenses. We affirm the denial of defendant's petition to reduce his convictions to misdemeanors, but agree the abstract of judgment must be amended and direct the trial court to do so.³

FACTUAL AND PROCEDURAL BACKGROUND⁴

This court affirmed defendant's underlying convictions in a prior appeal (case no. A125343), and in doing so, we provided the following background to the case:

"Defendant performed maintenance and yard work for Full Circle [Family Institute] and also assisted Full Circle in selling some vans. . . .

"On June 5, 2006, law enforcement officers conducted a parole search of defendant's residence after receiving information he was in possession of computer equipment that had been stolen from Full Circle. Officers found three computer keyboards and two monitors in defendant's bedroom.

"Police interviewed defendant, and he admitted taking the keyboards and monitors, as well as computer towers, from Full Circle. Defendant also admitted stealing ladders, paint and a bicycle from Full Circle. Police recovered the computer towers from defendant's van, and recovered the ladders and paint from defendant's girlfriend's residence. In a storage shed at defendant's girlfriend's residence, police also found a chain saw, a Bosch saw, and computer software, all of which belonged to Full Circle.

"Defendant was charged by information with two counts of grand theft (Pen. Code § 487, subd. (a)) (counts 1-2), and three counts of receiving stolen property (§ 496, subd. (a)) (counts 3-5). The information alleged a 1985 arson conviction as a prior strike under the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), prior felony convictions under section 1203, subdivision (e)(4), and prior prison terms under section 667.5, subdivision (b).

³ We address defendant's petition for habeas corpus in case no. A148210 in a separate order.

⁴ Defendant's request for judicial notice of exhibit A is hereby granted. (Evid. Code, § 452.)

“On June 26, 2007, defendant, while represented by counsel and after executing a written waiver of rights, entered guilty pleas to all counts and admitted the special allegations. There was no agreed upon disposition. After accepting defendant’s plea, the trial court granted his motion to dismiss the prior strike allegation, concluding the three strikes law was not intended to cover someone in defendant’s situation. Sentencing was continued, and defendant remained out of custody.” (*People v. Long* (June 23, 2010, A125343) [nonpub. opn.], fn. omitted.)

While sentence was pending in case no. SC147932A, defendant was charged with seven counts of commercial burglary, one count of residential burglary, and one count of receiving stolen property in case no. SC155309A. (*People v. Long, supra*, A125343) Defendant pleaded guilty to all seven counts of commercial burglary as well as to the count of receipt of stolen property and admitted a prior strike allegation, prior felony, and a special allegation that he committed the offenses while out on bail.

At a consolidated sentencing hearing, the court sentenced defendant to a 16-month prison term in case no. SC147932A to run consecutively to a 16-year primary prison term in case no. SC155309A and granted the People’s motion to dismiss the residential burglary charge in case no. SC155309A for a total sentence of 17 years, four months. On November 12, 2014, after passage of Proposition 47, defendant in propria persona filed a request for resentencing in both cases. However, while that petition was pending, defendant, now represented by counsel, filed a petition for resentencing on December 19, 2014, solely in case no. SC147932A.

The trial court denied the petition as to counts 1 and 3, but granted Proposition 47 relief as to the remaining counts. Defendant appeals.

DISCUSSION

Denial of Proposition 47 Petition Was Proper

“Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants.” (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1091.) As relevant here, Proposition 47 added section 490.2 and amended section 496.

Section 490.2, subdivision (a) provides: “Notwithstanding Section 487 or any 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, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.” As amended, section 496, subdivision (a) now reads, “if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.”

The People responded to defendant’s petition with no objection to counts 2, 4 or 5 being reclassified. However, they opposed reclassification as to counts 1 and 3, citing the disqualifying factor of the computer equipment being valued at more than \$950.

Under Proposition 47, a defendant “ ‘will have the initial burden of establishing eligibility for resentencing . . . : *i.e.*, whether the petitioner is currently serving a felony sentence for a crime that would have been a misdemeanor had Proposition 47 been in effect at the time the crime was committed. If the crime is a theft offense under sections . . . 490.2[] or 496, the petitioner will have the additional burden of proving the value of the property did not exceed \$950.’ ” (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.)

As Proposition 47 does not state an applicable evidentiary standard, we look to Evidence Code section 115, which states, “[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.” (See *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1040.) We review a trial court’s reclassification determination under the substantial evidence standard. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581, fn. 5; *In re Corey* (1964) 230 Cal.App.2d 813, 823-824.)

Defendant contends he carried his burden to show the value of the stolen computer systems and equipment was less than \$950, and the trial court incorrectly applied the preponderance of the evidence standard. We disagree.

The trial court had before it defendant's declaration, as well as the declaration of Brian Van Weele, the director of Full Circle in 2006, to show the computer equipment was worth \$950 or less. In opposition, the People relied on the original testimony of the investigating officer, Sergeant Michael Blasi, who valued the computer equipment at well over \$950.

In his own declaration, defendant valued the computers and equipment at \$295. He asserted each monitor and tower was worth \$50 and each keyboard was worth \$15. Defendant acknowledged he had posted one of the towers for sale at a price of \$325, but claimed he had installed a new hard drive and memory, thus increasing its value. The trial court did not credit defendant's valuation, stating, "I'm not sure that I give it much credibility given his record, and certainly if his belief was true then that should have been raised back then when the value mark was only \$400 and that wasn't raised."

Van Weele averred that defendant's declaration "appear[ed] to be truthful to the best of [his] memory," "the hard drives of the computers were removed due to the sensitivity of the information" contained on them, and he "estimate[d] that each of the computer systems taken [was] worth about 50 to 100 dollars." However, during testimony, Van Weele admitted both that he did not "personally write" his declaration and that he "didn't see a declaration by Mr. Long." Instead, what defendant asserted was "communicated verbally" to him, and Van Weele had understood that defendant's declaration was written in 2006, not in 2015 for purposes of the hearing. Moreover, when asked if the hard drives were destroyed or merely cleaned and replaced, Van Weele stated, "I can't say for sure since I wasn't part of that process." He also could not say with certainty that the stolen computers were the ones that had been sent to have their hard drives cleaned or removed. Thus, in regard to Van Weele's declaration and testimony, the court stated, "Mr. Van Weele seemed like a very nice man but I don't know that he had anything to add to my understanding of the value because

understandably he doesn't know much about it. I mean he never made an attempt [to] value them," and that his testimony showed "he really didn't know how much [the computers and equipment] were worth or really what was inside of [the towers]."

"A party required to prove something by a preponderance of the evidence 'need prove only that it is more likely to be true than not true.' [Citation.] Preponderance of the evidence means 'that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is addressed.'" (Italics added.)' [Citation.] In other words, the term refers to 'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods* (2009) 171 Cal.App.4th 1549, 1567.) "Further, the standard of proof at [trial was] by a preponderance of the evidence, not proof beyond a reasonable doubt. [Citation.] 'If the circumstances reasonably justify the '[trial court's] findings,' the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] We do not reweigh or reinterpret the evidence: rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citations.]" (*People v. Baker* (2015) 126 Cal.App.4th 463, 469.)

Here, the trial court noted that even assuming the People had the burden to prove the offense warrants the current punishment, the burden had been met. In the end, the trial court credited Sergeant Blasi's original evaluation of the computer equipment and noted nothing before the court convinced it that the officer's assessment in 2006 was wrong. Sergeant Blasi researched the same make and model of the towers and equipment online, and using the lowest estimate, valued the computers and equipment at well over \$950. This evidence suffices to support the trial court's denial of defendant's petition.

The Abstract of Judgment Should be Corrected

Defendant contends, and the People agree, that the abstract of judgment should be changed to reflect that one of his convictions for commercial burglary in case no. SC153309A and one of his convictions for grand theft in case no. SC147932A are nonviolent offenses. " 'It is not open to question that a court has the inherent power to

correct clerical errors in its records so as to make these records reflect the true facts. . . . The court may correct such errors on its own motion or upon the application of the parties.’ ” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [noting that courts may correct clerical errors at any time].)

Here, the boxes for count 7 in case no. SC153309A and count 1 in case no. SC147932A under the heading “consecutive 1/3 violent” are checked on the abstract of judgment, but neither offense was considered violent. We therefore agree that the abstract of judgment should be corrected.

DISPOSITION

The order denying defendant’s Proposition 47 petition is affirmed. The trial court is directed to prepare an amended abstract of judgment to reflect the nonviolent nature of his convictions for grand theft and commercial burglary. Count 1 in case no. SC147932A and count 7 in case no. SC153309A should be changed to “consecutive 1/3 non-violent.” A certified copy of the amended abstract of judgments should then be forwarded to the Department of Corrections and Rehabilitation.

Banke, J.

We concur:

Margulies, Acting P.J.

Dondero, J.