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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEVYN E. BOOKER,

Defendant and Appellant.

B266506

(Los Angeles County  
Super. Ct. No. MA055352)

APPEAL from an order of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Affirmed.

Athena Shudde, 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, Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

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Devyn E. Booker appeals from an order denying his application to designate his prior felony conviction for receipt of stolen property as a misdemeanor pursuant to Penal Code section 1170.18.<sup>1</sup> We affirm.

## **BACKGROUND**

The following facts are taken from the preliminary hearing: In September 2011, the victim's Xbox, iPod and computer were stolen. A few days after they were stolen, Booker and his girlfriend, who were neighbors of the victim, told him to pay \$2,000 to have his belongings returned. During the conversation, Booker and his girlfriend also made comments and jokes about pictures the victim had on his computer. An email address registered to Booker was used to log on to the victim's Xbox to play games. At Booker's direction, his girlfriend pawned the Xbox. The victim later bought back his Xbox from the pawnshop.

According to the probation report, the victim never recovered his iPod or computer. The computer was valued at \$1,900.

In September 2012, Booker pleaded no contest to count 5 of a multi-count information, receiving stolen property—an Xbox and a computer. (§ 496, subd. (1).)

In July 2015, Booker filed an application to have his felony conviction designated as a misdemeanor because the value of the property he received was not more than \$950. (§ 1170.18, subd. (f).) Booker's application included no attachment or statement of facts, but the trial court allowed his counsel to supplement the application with argument referencing the preliminary hearing transcript and probation report. Booker's counsel argued that the preliminary hearing testimony explained how the police were able to trace the Xbox to Booker but that no similar testimony was provided for the computer. Likewise, Booker's counsel argued that the probation report showed the victim recovered the Xbox, but not the computer, calling into question whether Booker ever received the computer given that it was never recovered. Moreover, counsel argued there was no

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<sup>1</sup> All statutory references are to the Penal Code.

discussion at the plea hearing about which stolen items Booker had received. Thus, Booker argued the trial court should consider only the value of the Xbox (which was less than \$950) and not the value of the computer (which was more than \$950).

Noting Booker had entered a no contest plea to count 5 of the information, which listed the stolen property to be an Xbox and a computer, the trial court concluded he had failed to meet his burden of demonstrating the value of the stolen property did not exceed \$950. The trial court denied the application.

Booker filed a timely notice of appeal.

## **DISCUSSION**

On appeal, Booker contends the record did not establish the value of the stolen property and his no contest plea did not admit he received both the Xbox and the computer.

On November 4, 2014, California voters passed Proposition 47, the Safe Neighborhoods and Schools Act, which reduces certain nonserious and nonviolent crimes, such as low-level drug- and theft-related offenses, from felonies to misdemeanors. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 889-890.) Proposition 47 authorizes a person who has completed his or her sentence for a felony conviction and who would have been guilty of a misdemeanor under the act to file an application to have the felony conviction designated as a misdemeanor. (§ 1170.18, subd. (f); see § 1170.18, subd. (a) [resentencing to a misdemeanor “in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act”].)

Proposition 47 makes receipt of stolen property a misdemeanor “if the value of the property does not exceed . . . \$950.” (§ 496, subd. (a).) Booker acknowledges he has the burden of proof as to the value of the property in order to obtain relief under section 1170.18. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880 [“We think it is entirely appropriate to allocate the initial burden of proof to the petitioner to establish the facts upon which his or her eligibility is based”]; *People v. Page* (2015) 241 Cal.App.4th 714,

719 [defendant bears “initial burden” of establishing his eligibility for relief under Proposition 47 and proving that the value of the property “did not exceed \$950”].)

Here, Booker failed to establish that the value of the property he received did not exceed \$950. He pleaded no contest to count 5 “as alleged” in the information, which charged Booker with receipt of stolen property, “to wit, XBOX AND COMPUTER.” His counsel’s arguments based on the preliminary hearing and probation report did not establish that the value of the property he received was less than \$950. Rather, the preliminary hearing testimony showed he and his girlfriend knew about the contents of the computer and demanded \$2,000 for the return of the stolen items, and the probation report listed the value of the computer as \$1,900.

Because Booker did not meet his initial burden of proof, which included proving that the value of the received property did not exceed \$950, we affirm.

#### **DISPOSITION**

The order denying Booker’s application is affirmed without prejudice.

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CHANNEY, Acting P. J.

WE CONCUR:

JOHNSON, J.

LUI, J.