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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KURTIS WAYNE McMORRIES,

Defendant and Appellant.

E062983

(Super.Ct.No. SWF1200084)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Christen Somerville, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Kurtis Wayne McMorries appeals from the denial of his petition to reduce his conviction of receiving stolen property to a misdemeanor. (Pen. Code,¹ §§ 496, subd. (a), 1170.18.) Defendant contends the trial court erred in relying on a police report to establish that the value of the items taken exceeded \$950 because the police report was not part of the record of conviction, and nothing in the record of conviction established the value of the property. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On April 2, 2012, defendant entered a plea of guilty to felony possession of stolen property. (Pen. Code, § 496, subd. (a).) Additional charges of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), possession of drug paraphernalia (Bus. & Prof. Code, § 4140), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), and eight allegations that defendant had served prior prison term convictions (Pen. Code, § 667.5, subd. (b)) were dismissed. Defendant received a three-year local prison sentence, consisting of two years suspended and one year in a residential treatment program. (Pen. Code, § 1170, subd. (h).)

Defendant filed a petition under section 1170.18 to reduce his felony conviction to a misdemeanor. At the hearing on the petition, the trial court observed that the police report contained a page and a half list “of electronic items, like laptops, speakers, an LG cell phone,” and noted that “[c]learly the amount of loss is over \$950.” The complaint

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

alleged that the stolen property consisted of stereo equipment, but the complaint did not state any value for the property. Over defense counsel's objection that the police report was not part of the record of conviction, the trial court denied the petition.

DISCUSSION

Standard of Review

When interpreting a voter initiative, we apply the same principles that govern statutory construction. (*People v. Rizo* (2000) 22 Cal.4th 681, 685-686.) We first look “to the language of the statute, giving the words their ordinary meaning.” (*Id.* at p. 685.) We construe the statutory language “in the context of the statute as a whole and the overall statutory scheme.” (*Ibid.*) If the language is ambiguous, we look to the “voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.” (*Ibid.*)

Resentencing Under Proposition 47 and Section 1170.18

On November 4, 2014, the voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain drug- and theft-related crimes from felonies or wobblers to misdemeanors for qualified defendants and added, among other statutory provisions, section 1170.18. Section 1170.18 creates a process through which persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing. Under sections 1170.18, subdivision (a), and 490.2, receiving stolen property (§ 496, subd. (a)) is an offense that qualifies for resentencing if the value of the

property is less than \$950. Section 1170.18, subdivision (b), provides in part: “Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria for subdivision (a).”

In *People v. Sherow* (2015) 239 Cal.App.4th 875 (*Sherow*), the court observed that “Proposition 47 does not explicitly allocate a burden of proof.” (*Id.* at p. 878.) The court stated that “applying established principles of statutory construction we believe a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing. In such cases, it is important to keep in mind a person . . . was validly convicted under the law applicable at the time of the trial of the felony offenses. It is a rational allocation of burdens if the petitioner in such cases bears the burden of showing that he or she is eligible for resentencing of what was an otherwise valid sentence.” (*Sherow*, at p. 878.) We believe the court in *Sherow* reached the correct result on the issue, and we adopt the analysis and conclusion of that court.

In *Sherow*, the court explained that it was entirely appropriate, fair, and reasonable to allocate the initial burden of proof to the petitioner to establish the facts upon which eligibility is based because the defendant knows what items he possessed. In the instant case, defendant knows what items he possessed. Thus, “[a] proper petition could certainly contain at least [defendant’s] testimony about the nature of the items taken. If he made the initial showing the court can take such action as appropriate to grant the petition or permit further factual determination. [Citation.]” (*Sherow, supra*, 239 Cal.App.4th at p. 880.)

Here, defendant's petition gave the trial court no information on the value of the property. He has thus failed to show his eligibility for resentencing.

DISPOSITION

The order denying defendant's petition for resentencing is affirmed without prejudice to subsequent consideration of a properly filed petition. (*Sherow, supra*, 239 Cal.App.4th at p. 881.)

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.