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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

SCOTT ERNEST SHARP,

Defendant and Respondent.

E063013

(Super.Ct.No. RIF1312249)

OPINION

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

Affirmed.

Michael A. Hestrin, District Attorney, Emily R. Hanks and Donald Ostertag,
Deputy District Attorneys, for Plaintiff and Appellant.

Heather L. Beugen, under appointment by the Court of Appeal, for Defendant and
Respondent.

The People appeal the trial court’s order granting defendant Scott Ernest Sharp’s petition to reduce his felony receipt of stolen property (Pen. Code, § 496, subd. (a))¹ conviction to a misdemeanor under the Safe Neighborhoods and Schools Act (Proposition 47). On appeal, the People argue: (1) defendant failed to meet his burden of proving eligibility under Proposition 47; and (2) the trial court incorrectly denied the People the opportunity to be heard. For the reasons explained below, we affirm the order granting defendant’s petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

On November 8, 2013, defendant was charged in an amended complaint with receiving stolen property (§ 496, subd. (a)). The amended complaint also alleged that defendant had suffered seven prior prison terms (§ 667.5, subd. (b)) and one prior strike conviction (§§ 667, subds. (c) and (e)(1), 1170.12, subd. (e)(1)).² With respect to the stolen property, the amended complaint identified the items only as “MISCELLANEOUS.”

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The prior convictions were listed as follows: an August 2001 assault with a deadly weapon by force likely to cause great bodily injury (§ 245, subd. (a)(1)); a March 2004 receiving a stolen vehicle (§ 496d, subd. (a)); a September 2008 recklessly evading a peace officer (Veh. Code, § 2800.2); a December 2011 vehicle theft (Veh. Code, § 10851); an August 2012 criminal threat (Pen. Code, § 422); a July 2013 auto theft with a prior (§ 666.5); and a September 2013 auto theft with a prior (§ 666.5).

On March 26, 2014, defendant pled guilty to receiving stolen property and admitted to having suffered five prior prison terms and one prior strike conviction. The factual basis for the plea was as follows:

“THE COURT: . . . [¶] [Defendant], is it true that on October 28, 2013, in Riverside County, you were in receipt of stolen property you knew was stolen?”

“THE DEFENDANT: Yes.”

Defendant also declared in the plea form that he “did the things that are stated in the charges” he was admitting to. That same day, defendant was sentenced to a total term of two years eight months in state prison with a credit of 300 days for time served.

On November 4, 2014, voters enacted Proposition 47. It went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) As of its effective date, Proposition 47 classifies as misdemeanors certain drug- and theft-related offenses that previously were felonies or “wobblers,” unless they were committed by certain ineligible defendants. (§ 1170.18, subd. (a).)

Proposition 47 also included a provision that allows certain offenders to seek resentencing. Defendants who are serving a sentence for a felony that would have been a misdemeanor had Proposition 47 been in effect at the time of the offense may file a petition for recall of sentence. (§ 1170.18.)

On November 20, 2014, defendant, in pro. per., filed a handwritten letter to the court, requesting that his felony conviction be reduced to a misdemeanor. The letter did not indicate the nature of the stolen property or the amount of loss. On December 9,

2014, the People filed a response opposing resentencing on the ground that defendant was ineligible because the “[a]mount of loss believed to be over \$950.”

On January 15, 2015, without conducting a hearing, the trial court summarily granted defendant’s petition for resentencing and reduced his receipt of stolen property conviction to a misdemeanor. The trial court’s order notes, “People object that amount is over 950.00. Court records show identification documents only stolen and grants petition.” Defendant was thereafter resentenced to 365 days in county jail, with credit for time served, and ordered to report to parole.

On March 2, 2015, the People filed a timely notice of appeal.

II

DISCUSSION

The People argue that defendant failed to meet his burden to prove eligibility for resentencing under section 1170.18. The People further contend that the trial court denied the People their constitutional right to be heard in opposition to defendant’s petition for resentencing.

Defendant responds that his only burden under Proposition 47 is to file a petition alerting the court and the People that he desired resentencing; that the burden is then on the trial court to determine from the “record of conviction” whether his conviction would be a misdemeanor; and that the People were provided their due process right to be heard when they were allowed the opportunity to file a response to defendant’s petition.

Defendant also argues that the record of conviction supports the trial court’s finding he was eligible for resentencing and therefore the order should be affirmed.

A. *Standard of Review*

When interpreting a voter initiative, we apply the same principles that govern statutory construction. (*People v. Briceno* (2004) 34 Cal.4th 451, 459 (*Briceno*); *People v. Rizo* (2000) 22 Cal.4th 681, 685-686 (*Rizo*)). We first look “ ‘to the language of the statute, giving the words their ordinary meaning.’ ” (*Briceno* at p. 459; *Rizo* at p. 685.) “ ‘The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate’s intent]. [Citation.] When the language is ambiguous, “we refer to other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.” [Citation.]’ [Citation.] In other words, ‘our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure.’ ” (*Briceno, supra*, at p. 459.) We review the trial court’s legal conclusions de novo and its findings of fact for substantial evidence. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136 (*Perkins*)).

B. *Proposition 47*

As previously noted, on November 4, 2014, voters approved Proposition 47, 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. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 889-

890.) Section 1170.18 creates a process through which qualified persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing. (See generally *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1109.)

Specifically, section 1170.18, subdivision (a), provides: “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing 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.” Thus, in order to be eligible for resentencing, defendant must be a person “who would have been guilty of a misdemeanor” if Proposition 47 had been in effect at the time of his offense. (§ 1170.18, subd. (a).)

Section 1170.18, subdivision (b), states: “Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to 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, those sections have been

amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.”

Proposition 47 was intended 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 this act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment.” (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70 (Pamphlet).) Essentially, the voters’ intent in adopting Proposition 47 was to except dangerous and violent offenders from its benefits. The initiative is to be liberally construed. Section 15 states, “This act shall be broadly construed to accomplish its purposes.” (Pamphlet, *supra*, text of Proposition 47, § 15, p. 74.)

Here, defendant was convicted of receiving stolen property in violation of section 496, subdivision (a), which, as amended by Proposition 47, now specifies that “if the value of the [stolen] property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor.” (§ 496, subd. (a); see *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) Absent other disqualifying circumstances, defendant would be eligible for resentencing if the value of the stolen property did not exceed \$950.

C. *Burden of Proof under Proposition 47*

The People argue that defendant failed to meet his burden to prove eligibility for resentencing under section 1170.18 because defendant did not attach any documents or evidence in support to his petition. Essentially, the People contend the trial court abused

its discretion by reaching the merits of defendant's petition without first finding he made a prima facie case of entitlement to resentencing. Defendant responds that he met the only burden he had under section 1170.18, which was to file a petition alerting the prosecution and the trial court that his felony conviction may be eligible for reduction to a misdemeanor.

“The statute itself is silent as to who has the burden of establishing whether a petitioner is eligible for resentencing.” (*Perkins, supra*, 244 Cal.App.4th at p. 136.) Since the time of defendant's petition, several cases have interpreted section 1170.18 and each has placed the initial burden of establishing eligibility for resentencing under Proposition 47 on the petitioner. (See, e.g., *People v. Bush* (2016) 245 Cal.App.4th 992, 1007; *Perkins, supra*, at p. 136; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450; *People v. Sherow* (2015) 239 Cal.App.4th 875, 878.) That burden entails “set[ting] out a case for eligibility, stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citations.]” (*Perkins*, at pp. 136-137.)

The People urge this court to create a rule that a lower court abuses its discretion if it grants relief to a defendant who has not attached evidence to his petition, even if, as was in this case, there is evidence of the defendant's eligibility in the court's records. This court has previously declined to adopt such a rule, holding instead that a trial court *does not* abuse its discretion by determining a petitioner's eligibility based on evidence in

the court's records, and not submitted by the parties. (*People v. Abarca* (2016) 2 Cal.App.5th 475, 480 (*Abarca*), review granted Oct. 19, 2016, S237106 [trial court acted within its discretion in considering evidence contained in court records on the issue of whether the value of the items stolen exceeded \$950]; *People v. Huerta* (2016) 3 Cal.App.5th 539, 543 (*Huerta*) [same].) This conclusion is supported by the text of section 1170.18, which vests authority in the trial court, “[u]pon receiving a petition,” to “whether the petitioner [is eligible].” (§ 1170.18, subd. (b).) Nothing in section 1170.18 requires a trial court to deny a petition for failure to attach evidence, and the People have provided no authority for adopting such a rule. We therefore hold a trial court has discretion to base its eligibility determination on evidence from the record, even if the defendant has not submitted that evidence with his or her petition.

Our holding does not conflict with the well-settled rule that a Proposition 47 petitioner carries the burden to prove he or she is entitled to relief. (*Perkins, supra*, 244 Cal.App.4th at p. 136.) We simply hold that a trial court has broad discretion to process a petition that does not meet the burden articulated in *Perkins*. (See *Perkins*, at p. 138 [“We recognize Proposition 47 has imposed a substantial, if temporary, burden on the courts. Superior courts have inherent authority to adopt procedures needed to exercise jurisdiction as well as to manage and control their dockets.”]; *People v. Fedalizo* (2016) 246 Cal.App.4th 98, 108 (*Fedalizo*) [“trial courts have substantial flexibility to devise practical procedures to implement Proposition 47, so long as those procedures are consistent with the proposition and any applicable statutory or constitutional

requirements”].) For example, a trial court has discretion to allow a petitioner to amend his or her pleading to include evidence regarding the nature of the offense if there is a reasonable possibility he or she is eligible. Or, a trial court may deny the petition outright if there is no indication in the record that a petitioner is entitled to relief. (*Huerta, supra*, 3 Cal.App.5th at pp. 543-544.) Additionally, a trial court has discretion to set a hearing and allow the parties to present evidence and argument regarding eligibility. (*Fedalizo, supra*, 246 Cal.App.4th at p. 108.) If no party requests a hearing, the lower court has discretion to grant or deny the petition based on a review of the evidence in its file. (*Abarca, supra*, 2 Cal.App.5th at p. 480.)

That is precisely what the trial court did in this case. It reviewed the evidence in the record and determined defendant was eligible for resentencing based on its findings that: (1) defendant had received stolen identity documents only; and (2) those documents were worth less than \$950. The People’s claim of error is not that these factual findings were based on insufficient evidence, but that the findings are based on evidence that was not submitted with defendant’s petition.³ We do not see this as a reason to reverse the trial court’s order. Indeed, reversing the court would only lead to a waste of judicial resources, as defendant would simply refile his petition with a declaration stating he received stolen identification documents valued at less than \$950 and the trial court would again find defendant eligible for relief. Because the People have provided nothing

³ The People do not argue the trial court’s value finding was factually incorrect or unsupported by substantial evidence.

to rebut the presumption of a court order, we reject the People’s arguments to the contrary.

D. *Opportunity to Be Heard*

We also reject the People’s claim that the trial court denied their constitutional right to be heard when the court granted defendant’s petition without holding a hearing. The trial court did not deprive the People of due process. The People *received notice* of defendant’s petition and responded to it; however, the People chose not to submit evidence with their response and also chose not to request a hearing. (*People v. Superior Court (Kaulick)* 215 Cal.App.4th 1279, 1297-1298 [due process entitled the prosecution to notice of a defendant’s petition and the opportunity to be heard on the petition’s merits].)

III

DISPOSITION

The order granting defendant’s petition for resentencing of his conviction for receipt of stolen property is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

SLOUGH
J.