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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.

JUAN MARTINEZ, JR.,

Defendant and Appellant.

E065813

(Super.Ct.No. INF057676)

O P I N I O N

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

Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Juan Martinez, Jr., filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied. After defendant and

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

counsel for Appellate Defenders, Inc. filed notices of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying one potentially arguable issue: whether the court is required to make a record of how it determines the value of a disqualifying loss when denying a petition for resentencing on that basis. We affirm.

I. PROCEDURAL HISTORY

On March 19, 2007, the People filed a felony complaint charging defendant with burglary for unlawfully entering The Home Depot with the intent to commit theft (count 1; § 459) and unlawfully obtaining goods valued at more than \$400 using an access card and access card account information which had been altered in violation of sections 484e and 484f (count 2; § 484g).

On January 18, 2008, defendant pled guilty to the count 1 offense. The court dismissed count 2 upon the People's motion. The court placed defendant on 36 months' probation with a term requiring that he serve 90 days in jail.² On September 9, 2015, defendant filed a petition for resentencing alleging he did not believe the value of the goods he obtained unlawfully exceeded \$950.

² Defendant simultaneously pled guilty in another case to a misdemeanor charge of violating a restraining order. (§ 273.6.) The People dismissed a third case upon defendant's entry of a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. Defendant's conviction in the instant case was to be reduced to a misdemeanor pursuant to section 17, subdivision (b) upon his successful completion of probation.

On September 15, 2015, defendant pled guilty to felony child abuse or endangerment under circumstances likely to cause great bodily injury and misdemeanor child endangerment against another victim. Defendant also pled guilty in two other cases to violation of a restraining order and driving under the influence respectively. The court granted defendant felony probation. Defendant admitted his commission of the offenses constituted a violation of his probation in the instant case; the court terminated defendant's probation in this case.

In a response to the petition dated November 24, 2015, the People asserted defendant was not entitled to relief because, although the value of the unlawfully obtained goods was unknown,³ defendant had been convicted of an offense involving fraud. On March 9, 2016, the court denied defendant's petition, finding the value of the unlawfully obtained goods was \$5,397, which exceeded \$950 and rendered the offense a nonqualifying felony for resentencing purposes.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880 [defendant bears the burden of proving the value of the goods taken did not exceed \$950].)

³ The People alleged defendant had entered The Home Depot on five separate occasions and obtained goods unlawfully.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.