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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD MOSES CASTRO,

Defendant and Appellant.

G051273

(Super. Ct. No.12CF3138)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Jonathan S. Fish, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Richard Moses Castro pleaded guilty to, among other things, the unlawful taking of a vehicle (2003 Chevrolet Silverado), a felony. (Veh. Code, § 10851, subd. (a).) The trial court sentenced him to two years in county jail, but divided it by ordering defendant to serve one year in county jail followed by one year of mandatory supervision. While defendant was on mandatory supervision, he absconded. Ultimately, the court found defendant to be in violation of his mandatory supervision terms, terminated mandatory supervision, and returned defendant to custody to serve out his remaining term.

Subsequently, defendant filed an application to reduce the felony count of unlawfully taking a vehicle reduced to a misdemeanor under Proposition 47. (Pen. Code, § 1170.18, subds. (a), (f); all further undesignated statutory references are to this code.) The court denied the motion.

Defendant appealed from this ruling and we appointed counsel to represent him. Counsel filed a brief summarizing the proceedings and facts of the case and advised the court he found no arguable issues to assert on defendant's behalf. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *People v. Wende* (1979) 25 Cal.3d 436.) Although we notified defendant he could file written argument on his own behalf, the time to do so has passed and no communication has been received from him.

To assist us in our independent review of the record, counsel suggests we consider whether: (1) principles of statutory interpretation or equal protection requires defendant's conviction of Vehicle Code section 10851, subdivision (a) be reduced to a misdemeanor under section 1170.18 even though it is not listed in the statute; and (2) "in the face of a silent record, in 2012 (the year this crime was committed), can a 2003 Chevrolet Silverado arguably be considered to be worth \$950.00 or less."

We have considered these issues and conclude they are without merit. Section 1170.18 does not, by its terms, address unlawfully taking a vehicle, and nothing

in its language indicates it was ever intended to apply to this crime. Nor has defendant demonstrated that the failure to list Vehicle Code section 10851 in section 1170.18 “constitutes a legislative classification which is not reasonably related to a legitimate public purpose” (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1466, quoting *In re Kapperman* (1974) 11 Cal.3d 542, 545), as required to show section 1170.18 violates equal protection. Lastly, a vehicle’s value cannot be argued from a silent record given the well-settled rule that “[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *People v. Carter* (2010) 182 Cal.App.4th 522, 531, fn. 6 [“appellant’s burden on appeal to present an adequate record for review and affirmatively to demonstrate error”].)

We have also independently reviewed the record according to our obligations under *Anders v. California, supra*, 386 U.S. 738, *People v. Wende, supra*, 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106 but found no arguable issues on appeal. The postjudgment order denying defendant’s section 1170.18 petition is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.