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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.

COLBY BLAKE OUTLAW,

Defendant and Appellant.

G051466

(Super. Ct. No. 01WF0340)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Thomas A. Glazier, Judge. Affirmed.

William D. Farber, 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, A. Natasha Cortina,
Meagan J. Beale, and Parag Agrawal Deputy Attorneys General, for Plaintiff and
Respondent.

Colby Blake Outlaw appeals from the trial court's denial of his Penal Code section 1170.18 petition to have his Vehicle Code section 10851, subdivision (a), felony conviction designated as a misdemeanor after the passage of Proposition 47, the Safe Neighborhoods and Schools Act. Outlaw argues Proposition 47 (which enacted Pen. Code, § 490.2), applies to the unlawful taking of a vehicle valued at no more than \$950, and that denying such relief violates his right to equal protection.

We affirm the court's order because, according to the record on appeal, documents relating to Outlaw's felony conviction contain no evidence showing the vehicle he unlawfully took was valued at no more than \$950. (See *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1338 [as to Prop. 36 and Pen. Code, § 1170.126, court must determine "petitioner's eligibility for resentencing based on the record of conviction"].) Outlaw's 2001 guilty plea merely shows he unlawfully took and drove a 1999 "Toyota Rav4."

In his reply brief, Outlaw acknowledges he did not establish the value of the stolen vehicle was less than \$950 at the hearing. Indeed, he made no attempt in either his briefing or during the argument to offer proof the vehicle was valued at less than \$950. Thus, not surprisingly, the trial court in making its ruling made no express finding regarding the vehicle's value. Outlaw suggests the valuation issue was not addressed by the trial court because it "was deemed premature in view of the court's conclusion that Proposition 47 was inapplicable" He does not explain why this matters. We conclude the equal protection argument is not ripe for review in this case because it would require us to speculate the 1999 Toyota Rav4 involved in Outlaw's case was worth less than \$950. 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.) It is not enough to raise a theoretical equal protection legal

argument without also having the underlying facts to support the conclusion there was an actual equal protection violation.

The postjudgment order is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.