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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.

CHRISTOPHER DARYL BOGNER,

Defendant and Appellant.

G051480

(Super. Ct. Nos. 09WF0709 &
10WF1504)

O P I N I O N

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

Martin Kassman, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

* * *

In two separate prosecutions, defendant Christopher Daryl Bogner pleaded guilty to, among other things, receiving stolen property in 2009 (2009 Mercedes Benz GL450), a felony (Pen. Code, § 496, subd. (a)), and second degree burglary of a vehicle in 2010 (2010 Chevy Camaro), a felony (Pen. Code, §§ 459, 460, subd. (b)); all further statutory references are to this code). Taking defendant's other felony convictions into consideration, the trial court sentenced him to 3 years in state prison and added a 16 month concurrent sentence for violating his probation.

In 2014, defendant filed an application in each case to reduce his felony convictions to misdemeanors under Proposition 47. (§ 1170.18, subds. (a) and (f).) The court granted the motions in part, but continued the matter for the convictions that prosecution opposed having reduced. In February 2015, the court denied his application to redesignate his 2009 felony conviction for receiving stolen property and his 2010 felony conviction for second degree burglary of a vehicle.

Defendant appealed from these rulings and we appointed counsel to represent him. In his brief, counsel summarized the proceedings and facts necessary to decide this appeal, and while not arguing against defendant, informed 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. Counsel notified us he has not been able to contact defendant in order to advise him of his rights under *Wende*, despite attempts to mail defendant letters at different known addresses.

To assist in our independent review of the record, counsel suggests we consider whether equal protection principles require defendant's convictions for burglary and receiving stolen property be redesignated as misdemeanors under section 1170.18 even though burglary is not listed in the statute and the value of the stolen property received exceeded the statutory minimum of \$950 for misdemeanors.

We have considered the equal protection issues and conclude they are without merit. Section 1170.18 does not, by its terms, mention burglary, and nothing in its language suggests it was ever intended to apply to this crime. Nor has defendant demonstrated that the failure to list burglary 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, 1467, quoting *In re Kapperman* (1974) 11 Cal.3d 542, 545), as required to demonstrate the statute violates equal protection. Defendant also failed to meet his burden of establishing the value of the property taken from the vehicle did not exceed \$950 to support his argument that his second degree burglary conviction falls within the scope of section 1170.18. (*People v. Rivas-Colon* (Oct. 16, 2015, A144390) __ Cal.App.4th __, __ [2015 WL 6121754 at p. *2-3]; *People v. Sherow* (2015) 239 Cal.App.4th 875, 877 [“We agree . . . [the defendant] had the burden to show the property loss in each of those counts did not exceed \$950 and thus fell within the new statutory definition of shoplifting”].)

Furthermore, the statute specifically permits felony convictions for receiving stolen property be redesignated as misdemeanors so long as the property value did not exceed \$950. (§§ 1170.18, subd. (a), 496, subd. (a).) Defendant pleaded guilty to knowingly being in possession of a stolen luxury vehicle. We take judicial notice of the fact an almost new Mercedes Benz GL450 has a value that exceeds \$950. Without a showing that the Legislature’s classification of the crime as a felony is not reasonably related to a legitimate public interest, there is no equal protection violation in denying his application to redesignate this conviction as well.

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.

DISPOSITION

The postjudgment orders denying defendant's Penal Code section 1170.18 applications are affirmed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.