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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPHINE INES RICHARDSON,

Defendant and Appellant.

H042232

(Santa Clara County

Super. Ct. No. C1360502)

Defendant Josephine Ines Richardson pleaded no contest in 2013 to grand theft under Penal Code section 487, subdivision (a),¹ which prohibits theft of “money, labor, or real or personal property” with a “value exceeding nine hundred fifty dollars (\$950)” Defendant later petitioned for resentencing under section 1170.18, subdivision (a), seeking to have her felony grand theft conviction reduced to a misdemeanor. Defendant appeals the trial court’s order denying that petition. Because defendant admitted that the value of the property she took exceeded \$950 by pleading no contest to section 487, subdivision (a), we will affirm the order.

I. TRIAL COURT PROCEEDINGS

Defendant was charged by felony complaint in 2013 with one count of second degree robbery (§§ 211–212.5, subd. (c)). According to an offense summary in a memorandum in the record apparently prepared to support issuance of a bench warrant,

¹ Unspecified statutory references are to the Penal Code.

defendant assaulted a victim, took a pack of cigarettes, and fled. That same day, another victim reported that defendant assaulted her and took an EBT card that was worth \$500.

As part of a negotiated disposition, the prosecutor orally amended the complaint to add a grand theft count under section 487, subdivision (a). In exchange for dismissal of the robbery count, defendant pleaded no contest to grand theft. Regarding grand theft, the trial court asked defense counsel, “on behalf of your client, do you stipulate that there is a factual basis for the plea based on the results of the reading of the police report, and do you further concur in your client’s waiver of rights and entry of plea?” Counsel responded, “Yes, Your Honor,” and clarified that the plea was to section 487, subdivision (a), to which the court replied: “Subsection (a), just to make sure it’s -- straight grand theft.” Defendant was initially placed on probation but probation was later revoked and defendant was sentenced to two years in county jail.

Defendant petitioned for resentencing under section 1170.18 in March 2015 while serving her sentence. The trial court issued an order denying defendant’s petition without a hearing, reasoning that defendant was precluded as a matter of law from obtaining relief under section 1170.18 because she admitted that she had taken property valued at more than \$950 by pleading no contest to violating section 487, subdivision (a).

II. DISCUSSION

A. PROPOSITION 47

Proposition 47, approved by voters in November 2014, reduced several offenses from felonies to misdemeanors. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) As relevant here, Proposition 47 added section 490.2, subdivision (a), which provides: “Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor”

Proposition 47 also added section 1170.18, subdivision (a), which provides a mechanism for individuals to petition for resentencing: “A person currently serving a sentence for a conviction ... of a felony or felonies who would have been guilty of a misdemeanor ... 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” (§ 1170.18, subd. (a).)

B. DEFENDANT IS NOT ELIGIBLE FOR RESENTENCING

Defendant argues that she is eligible for resentencing under section 1170.18 because the value of the property she stole was less than \$950. Resolving that issue requires statutory interpretation, which we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

Section 490.2, subdivision (a) states that, “[n]otwithstanding section 487,” theft of property with a value under \$950 is now a misdemeanor. To determine the meaning of the phrase, “[n]otwithstanding section 487” as used in section 490.2, subdivision (a), it is instructive to summarize section 487.

Section 487, subdivision (a) contains the general definition of grand theft: “When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)” Section 487, subdivision (b) lists specific types of theft that constitute grand theft even when the value of the property was less than \$950. (E.g., § 487, subd. (b)(1)(A) [grand theft when “farm crops are taken of a value exceeding two hundred fifty dollars (\$250)”].) Section 487, subdivision (c) states that property “taken from the person of another” is grand theft and does not provide a minimum property value. Similarly, section 487, subdivision (d) states that theft of an automobile or a firearm is grand theft and does not specify a minimum property value. (§ 487, subd. (d)(1), (d)(2).)

The most reasonable interpretation of the reference to section 487 in section 490.2, subdivision (a) is that the voters intended to change the definition of grand theft by

imposing a \$950 minimum value requirement to all forms of grand theft. For example, an individual who was convicted of grand theft by stealing property from a person (§ 487, subd. (c)) before Proposition 47 may now obtain resentencing under section 1170.18, subdivision (a) if the value of the property stolen from the person was less than \$950.

Defendant argues she is likewise entitled to petition for resentencing under section 1170.18, subdivision (a) because there is evidence that the property she stole was worth less than \$950. But the crime to which she pleaded no contest specified that the value of the property she stole *exceeded* \$950. (§ 487, subd. (a).) Defendant's plea admitted every element of the crime charged (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364 (*Voit*)), including that the value of the property exceeded the statutory minimum. Because defendant admitted through her plea that the value of the property she took exceeded \$950, she is precluded from now arguing that the value of that property was less than \$950.

Defendant's argument is akin to challenging the sufficiency of the factual basis for a plea, which a different panel of this court determined is not cognizable on appeal. (*Voit, supra*, 200 Cal.App.4th at pp. 1370–1371.) In *Voit*, the defendant argued that his plea bargain was invalid because it lacked a sufficient factual basis. The defendant asked the appellate court to conduct its own review of the preliminary hearing transcript and police reports to determine whether there was a factual basis. (*Id.* at p. 1372.) We declined that invitation, finding that section 1192.5, which requires trial courts to ensure that there is a factual basis for guilty pleas, did not impose the same duty on appellate courts. (*Voit*, at pp. 1365–1366.) We determined that when a trial court obtains a stipulation from defense counsel that there is a factual basis for a plea, and the defendant does not claim on appeal that his or her plea resulted from any mistake or ignorance, the defendant is judicially estopped from challenging the factual basis for the plea. (*Id.* at pp. 1370–1372.)

Here, when defendant pleaded no contest to grand theft under section 487, subdivision (a), her trial counsel agreed to stipulate “that there is a factual basis for the plea based on ... the police report” Defendant never appealed that conviction. She now attempts to argue in her section 1170.18 petition that the evidence before the trial court when she entered her no contest plea did not support the crime for which she was convicted because the value of the property she stole was less than \$950. Under the reasoning of *Voit*, defendant is estopped from challenging the factual basis of her plea in a section 1170.18 petition. (*Voit, supra*, 200 Cal.App.4th at pp. 1370–1371.)

The specific reference to \$950 in section 487, subdivision (a) distinguishes defendant’s case from cases where courts have granted relief under section 1170.18 for convictions under different Penal Code sections. For example, in *People v. Salmorin* (2016) 1 Cal.App.5th 738 (*Salmorin*), the Court of Appeal determined that the defendant was entitled to relief under section 1170.18 because none of the stolen checks that formed the basis for his felony forgery conviction (§ 470, subd. (d)) exceeded \$950. (*Salmorin*, at pp. 741–748.) Unlike section 487, subdivision (a), section 470 does not specify a value that an item must be worth to constitute forgery. Thus, the *Salmorin* court had no occasion to address the issue we resolve here.

Because defendant pleaded no contest to a crime that specified that the value of the property she stole exceeded \$950 (§ 487, subd. (a)), she is precluded as a matter of law from demonstrating that her felony conviction would have been a misdemeanor under section 490.2, subdivision (a). The trial court correctly denied defendant’s section 1170.18 petition.

III. DISPOSITION

The trial court’s order denying defendant’s Penal Code section 1170.18 petition is affirmed.

Grover, J.

WE CONCUR:

Rushing, P.J.

Premo, J.

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