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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELA PLACIDA BELTRAN-CARRANZA,

Defendant and Appellant.

H042332

(Monterey County

Super. Ct. No. SS131818A)

Defendant Angela Placida Beltran-Carranza seeks review of an order denying her petition for resentencing of her conviction for second degree commercial burglary, which she had brought under Penal Code section 1170.18.¹ The trial court had denied the petition because the sentence was based on a negotiated plea and because the value of the property taken exceeded \$950. On appeal, the People concede that the trial court erred in denying the petition on the basis of the plea agreement. We accept the concession and reverse the order.

Background

On November 8, 2013, defendant was charged with receiving stolen property, i.e., credit cards (§ 496, subd. (a), count 1); second degree commercial burglary from a commercial establishment (§ 459, count 2); first degree residential burglary (§ 459,

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

count 3)²; and identity theft (§ 530.5, subd. (a), count 4). Attached to each of these counts was an allegation that defendant had been released on bail or on her own recognizance when she committed the offense, within the meaning of section 12022.1.

On December 4, 2013, defendant pleaded guilty to counts 1 and 2, pursuant to a negotiated disposition. At sentencing on January 29, 2014, the court imposed a three-year jail term for count 2 and an additional eight-month term for count 1.

On November 19, 2014, defendant filed a petition for recall of her sentence and resentencing of count 2 to a misdemeanor, pursuant to section 1170.18. The trial court denied her petition. Defendant moved to reconsider the order on the ground that both counts 1 and 2 were presently considered misdemeanors and the value of the property did not exceed \$950. Count 2, the offense underlying the resentencing petition, pertained to burglary of a store called LIDS. According to defendant, the Salinas Police Department had listed the property taken as worth \$74.50.

On May 6, 2015, after extensive briefing and repeated continuances, the trial court finally ruled on the reconsideration motion. The court denied the motion and underlying petition for two reasons: the value of the items purchased with the stolen credit card exceeded \$950; and resentencing defendant would “substantially” deprive the People of the benefit of their bargain under the plea agreement. Defendant then filed this timely appeal.

Discussion

Section 1170.18, part of the “Safe Neighborhoods and Schools Act,” was enacted by the voters on November 4, 2014 in passing Proposition 47. (Proposition 47, as approved by voters, Gen. Elec. (Nov. 4, 2014). The provision allows a person currently

² At the hearing on defendant’s subsequent petition, the prosecutor acknowledged that count 3 was actually a second degree burglary, having been committed at a JC Penney store.

serving a felony sentence for an offense that is now a misdemeanor to petition for a recall of that sentence and for resentencing to a misdemeanor. “A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).)” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) “Section 1170.18 thus provides a two-step mechanism First, the trial court must determine [whether] the petitioner is eligible for resentencing under section 1170.18 based on a preponderance of the evidence. [Citations.] If the court finds the petitioner eligible, the trial court must determine the factual issue of whether the petitioner presents an unreasonable risk of danger to public safety if resentenced.” (*People v. Bush* (2016) 245 Cal.App.4th 992, 1001.)

Proposition 47 also added section 459.5, which defined a new crime, “shoplifting,” as “entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed [\$950]. Any other entry into a commercial establishment with intent to commit larceny is burglary.” Shoplifting is deemed a misdemeanor, with specified exceptions for certain prior convictions. (§ 459.5, subd. (a).)

As noted, the trial court denied defendant’s Proposition 47 petition for recall and resentencing because (1) the value of the property taken with the stolen credit card exceeded \$950 and (2) if relief were granted to defendant, “the People would be substantially deprived of the benefit of their bargain.” Defendant contends that both of these reasons were incorrect and that the trial court should be instructed to hold a hearing on her eligibility for the requested relief under section 1170.18, subdivision (b). By letter

brief the People concede that defendant was not automatically disqualified based on the plea agreement.³

The People's concession is appropriate. Section 1170.18, subdivision (a), provides: "A person currently serving a sentence for a conviction, *whether by trial or plea*, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') 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 in accordance with . . . [s]ection 459.5" (Italics added.) Thus, Proposition 47 expressly applies to those who are currently serving sentences for convictions obtained by plea agreement. (See *T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 651 [agreeing with petitioner that "by its plain language section 1170.18 applies to convictions by trial or plea, and thus the trial court erred by engrafting a plea agreement disqualifier into the statute"].) Defendant is entitled to a meaningful hearing at which her eligibility for resentencing is considered in accordance with the criteria and procedures set forth in section 1170.18.⁴

³ The People do not dispute the second point in defendant's appellate argument, thus implicitly conceding that the trial court also erred in finding the value of the property taken by defendant to exceed \$950. Only count 2 was the subject of the resentencing petition. The victim of that theft count was the LIDS store, not Jane Doe. The People did not question the accuracy of the reported amount taken from LIDS as \$74.50.

⁴ In their letter brief the People suggest that if the trial court finds defendant eligible for Proposition 47 relief, "the prosecutor should be permitted to withdraw from the plea agreement and to reinstate all dismissed charges." This is an issue currently before the Supreme Court (see *Harris v. Superior Court* (2015) 242 Cal.App.4th 244, review granted February 24, 2016, S231489; *People v. Perry* (2016) 244 Cal.App.4th 1251, review granted April 27, 2016, S233287 [holding for lead case].) The People's suggestion, however, is prematurely raised and will not be addressed; as there has yet been no finding of eligibility, any opinion on the People's entitlement to withdraw from the plea agreement would be based on speculation as to the outcome of the proceedings on remand.

Disposition

The May 6, 2015 order denying defendant's petition for recall of sentence and resentencing is reversed. The matter is remanded for the trial court to determine whether defendant is eligible for resentencing in accordance with section 1170.18.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.