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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SYDNEY JEAN HILL, Defendant and Appellant.	B262390 (Los Angeles County Super. Ct. No. KA099731)

APPEAL from an order of the Superior Court of Los Angeles County, Jack P. Hunt, Judge. Affirmed.

Brad K. Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez, Andrew S. Pruitt and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Sydney Jean Hill pled no contest to a felony—receiving stolen property—and admitted two prior drug-related felony convictions from 2000 and 2012. Hill also admitted violating probation in connection with her 2012 drug case. Although she was sentenced to three years and eight months in prison, her sentence was suspended and she was placed on formal probation with various terms and conditions. Following California voters' passage of "The Safe Neighborhoods and Schools Act," commonly known as Proposition 47, Hill petitioned the trial court for reduction of her felony conviction for receiving stolen property to a misdemeanor. After a hearing, the court reduced Hill's 2012 drug conviction to a misdemeanor, but denied the request to reduce the stolen property conviction from a felony to a misdemeanor. We affirm.

PROCEDURAL BACKGROUND

Hill was charged with one count of receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.[1] The complaint also alleged that Hill suffered two drug-related prior felony convictions from 2000 and 2012 within the meaning of section 1203, subdivision (e)(4). On October 29, 2012, Hill pled no contest to the receiving stolen property charge. Hill also admitted the two prior felony convictions, and admitted violating probation in connection with the 2012 drug case. The trial court sentenced Hill to three years on the receipt of stolen property case, and eight months for the probation violation to run consecutively. However, the court suspended imposition of the sentences in both cases and placed Hill on three years formal probation.

After her October 29, 2012 plea, Hill's probation was revoked in 2013, and, after it was reinstated, revoked again in 2014. On March 12, 2014, Hill admitted to violating probation in the stolen property case. The court then imposed the state prison term that had been suspended on October 29, 2012.

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[1] All undesignated statutory references are to the Penal Code.

On January 6, 2015, Hill filed a petition for resentencing under Proposition 47 (§ 1170.18, subd. (a)). Hill's petition did not allege any facts as to the value of the stolen property or even allege that the value of the property did not exceed $950. On January 26, 2015, the court held a hearing on Hill's petition. Citing the probation report, the prosecutor informed the court that the theft was approximately $5,000. The court reduced Hill's conviction in the 2012 drug case to a misdemeanor but denied the petition for reduction of the felony stolen property conviction.[2]

DISCUSSION

Hill contends the trial court erroneously denied her resentencing petition because: the prosecution had the burden of rebutting the presumption that the value of the stolen property did not exceed $950; the court improperly relied on evidence outside the record of conviction; and defense counsel was ineffective for not objecting to the court's consideration of matters outside the record of conviction. In turn, the People argue that Hill's petition was properly denied because she failed to show that the value of the stolen property did not exceed $950.

1. Standard of Review

"We review a '[superior] court's legal conclusions de novo and its findings of fact for substantial evidence.' [Citation.]" (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136 (*Perkins*).) Review of Proposition 47 cases involves issues of statutory interpretation, which we review de novo. (See *People v. Sherow* (2015) 239 Cal.App.4th 875, 878 (*Sherow*) ["our review of this appeal is based solely on our interpretation of the statute, which we review de novo"]; see also *People v. Rizo* (2000) 22 Cal.4th 681, 685 ["In interpreting a voter initiative like [Proposition 47], [the courts] apply the same principles that govern statutory construction"]; *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916 ["the trial court's legal interpretation of [a statute] is subject to de novo review"].)

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[2] The minute order denying Hill's petition indicates the trial court denied the petition because "the amount of loss in this case exceeds $950.00."

2. Proposition 47

In November 2014, California voters enacted Proposition 47, making certain drug and theft-related offenses misdemeanors, unless the defendants were otherwise ineligible. (§ 1170.18, subds. (a)-(c).) "These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) The statute also contains a resentencing provision, whereby persons " 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47." (*Id*. at p. 1092.) "A person who satisfies the statutory 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.' [Citation.]" (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1109.)

Here, Hill was convicted of receiving stolen property in violation of section 496 which, as amended by Proposition 47, now specifies that "if the value of the [stolen] property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor." (§ 496, subd. (a); see also *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) Absent other disqualifying circumstances, Hill would be eligible for resentencing if the value of the stolen property did not exceed $950.

3. Hill failed to show she was eligible for resentencing

Hill contends that she was entitled to a presumption of eligibility for resentencing under Proposition 47. That is, she argues that the court should have presumed the value of the stolen property did not exceed $950 and that she was therefore eligible for relief. We disagree. In fact, the existing presumption is that Hill "was validly convicted under the law applicable at the time" of her conviction, and "[i]t is a rational allocation of burdens if the petitioner in such cases bear the burden of showing that he or she is eligible for resentencing of what was an otherwise valid sentence." (*Sherow*, *supra*, 239 Cal.App.4th at p. 878.)

Certainly, we acknowledge that section 1170.18 is silent as to which party has the burden of establishing eligibility for resentencing. However, it is well-established that a party seeking relief typically carries the burden of proof as to each fact necessary to her claim for relief, unless a different burden is specifically assigned by law. (Evid. Code, § 500; see also *Vance v. Bizek* (2014) 228 Cal.App.4th 1155, 1163.) This principle "places the burden of proof in any contested matter on the party who seeks relief" because there is a "built-in bias in favor of the status quo" and a party who " 'want[s] the court to do something . . . [must] present evidence sufficient to overcome the state of affairs that would exist if the court did nothing.' [Citation.]" (See *Vance*, *supra*, 228 Cal.App.4th at p. 1163.) Appellate courts are in agreement that a defendant seeking resentencing under Proposition 47 has the burden of showing eligibility. (See *Perkins*, *supra*, 244 Cal.App.4th at p. 136 ["Because defendant is the petitioner seeking relief, and because Proposition 47 does not provide otherwise, 'a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing' "]; see also *Sherow*, *supra*, 239 Cal.App.4th at pp. 878-879; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450 (*Rivas-Colon*).)

Placing the burden on the petitioner to provide evidence showing eligibility is further supported by statutory interpretation. While "[t]he trial court's decision on a section 1170.18 petition is inherently factual, requiring the trial court to determine whether the defendant meets the statutory criteria for relief" (*People v. Contreras* (2015) 237 Cal.App.4th 868, 892), nothing in the plain language of the statute requires a trial court to hold a hearing in order to do so. (§ 1170.18, subd. (a); see also *Rivas-Colon*, *supra*, 241 Cal.App.4th at p. 452, fn. 4 [courts should interpret section 1170.18 similarly to section 1170.126]; *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1337 [in interpreting section 1170.126, the court noted "the statute does not expressly require the trial court to hold a hearing" to determine resentencing eligibility].) Rather, upon the defendant's filing of a petition stating a prima facie case for resentencing, supported by evidence, the trial court could

summarily grant the petition if the prosecution poses no opposition, or hold a hearing to address the issues in dispute. (See *Perkins*, *supra*, 244 Cal.App.4th at p. 138.)

Therefore, a defendant seeking resentencing must provide evidence sufficient to show eligibility in order to avoid a trial court summarily denying the petition. (See *Perkins*, *supra*, 244 Cal.App.4th at p. 137 ["the statute appears to assume most petitions can be resolved based on the filings"]; see also Couzens & Bigelow, Proposition 47, "The Safe Neighborhoods and Schools Act" (August 2015), p. 37 (Couzens & Bigelow), at <http://www.courts.ca.gov/documents/Prop-47-Information.pdf> [as of Feb. 5, 2016] [trial courts may summarily deny facially deficient petitions].) The petitioner must show he or she "would have been guilty of a misdemeanor . . . had [section 1170.18] been in effect at the time of the offense." (§ 1170.18, subd. (a).)

To be convicted of a misdemeanor under section 496, the value of the stolen property may not exceed $950. (§ 496, subd. (a).) Thus, "a successful petition . . . must set out a case for eligibility, stating and in some cases showing . . . the value of the property did not exceed $950. [Citation.]" (*Perkins*, *supra*, 244 Cal.App.4th at pp. 136-137.) This requires the defendant to "attach information or evidence necessary to enable the court to determine eligibility." (*Id.* at p. 137.) Here, Hill did not allege any value concerning the stolen property. By failing to set forth a value, or even to allege the value did not exceed $950, Hill did not state a prima facie case showing eligibility. Because Hill failed to satisfy her burden of proving she was eligible for resentencing, the trial court did not err in denying her petition. (See *id.* at p. 138 ["We hold only that the statute required defendant to include information supporting his petition with his initial filing. Since he did not do so, we cannot conclude the superior court erred in summarily denying his petition"].)

Since we conclude Hill failed to satisfy her initial burden of showing eligibility for resentencing, we need not reach the issue of whether the court erroneously relied on evidence outside the record of conviction. It is a well-settled "principle of appellate review that a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasoning." (*Green v. Superior Court* (1985) 40 Cal.3d 126, 138;

see also *People v. Dawkins* (2014) 230 Cal.App.4th 991, 1004 ["If right upon any theory of the law applicable to the case, [a decision] must be sustained regardless of the considerations which may have moved the trial court to its conclusion"].) Put another way, since Hill did not provide any evidence in her initial petition as to the value of the stolen property, her petition was correctly denied even if the court should not have relied on the probation report to determine the value of the stolen property. (See *Rivas-Colon*, *supra*, 241 Cal.App.4th at p. 453, fn. 3 ["Having reached this result [that he did not satisfy his burden], we need not consider Rivas-Colon's argument that the court erred by relying on the police report and store receipt"].)

4. Hill failed to show that trial counsel was ineffective

Hill also contends that defense counsel was ineffective for failing to object to the trial court's reliance on the probation report in denying her Proposition 47 petition. We disagree.

First, as discussed above, since Hill's petition failed to show eligibility for resentencing, we need not reach this issue. Second, Hill's ineffective assistance of counsel claim fails because the record does not reveal counsel's reason for failing to argue that the stolen property did not exceed $950, or that the court should not rely on the probation report to determine the value of the property. (*People v. Vines* (2011) 51 Cal.4th 830, 876 [rejecting ineffective assistance of counsel claim where record did not establish why defense counsel failed to introduce impeachment evidence].) In fact, given that the probation report established the value of the stolen property was $5,000, defense counsel, an officer of the court, would have mislead the court if counsel had argued that the value of the stolen property was less than $950. (Cal. Rules of Professional Conduct, rule 5-200(A), (B).) An attorney may choose not to object for many reasons, and the failure to object rarely establishes ineffectiveness of counsel. (*People v. Kelly* (1992) 1 Cal.4th 495, 540.)

DISPOSITION

We affirm the trial court's denial of Hill's petition. However, Hill is not precluded from filing a new petition in accordance with the views set forth in this opinion. (*Sherow*, *supra*, 239 Cal.App.4th at p. 881.)

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

HOGUE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.