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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MARCUS KEITH GOODALL, Defendant and Appellant.	D075555 (Super. Ct. Nos. SCD164630, SCD171695, SCD194211, SCD206987, SCD246792)

APPEALS from orders of the Superior Court of San Diego County, Lorna Alksne, Judge. Reversed and remanded with directions.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Allison V. Acosta and Michael D. Butera, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Marcus Keith Goodall filed five applications for redesignation of a felony offense to a misdemeanor pursuant to Penal Code section 1170.18, subdivision (f)[1] in five separate cases in which he suffered a conviction for a violation of the offense of unlawfully taking or driving a vehicle under Vehicle Code section 10851. In each case, the trial court summarily denied the application, without a hearing. Goodall filed a notice of appeal in each case.

In their initial briefing on appeal, the parties disputed whether Goodall's Vehicle Code section 10851 convictions were eligible for redesignation as misdemeanors under section 1170.18, subdivision (f). While Goodall's appeals were pending, the Supreme Court issued its opinion in *People v. Bullard* (2020) 9 Cal.5th 94 (*Bullard*). In *Bullard*, the Supreme Court concluded, "Except where a conviction is based on posttheft driving (i.e., driving separated from the vehicle's taking by a

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1 Unless otherwise specified, all subsequent references are to the Penal Code.

Section 1170.18 was enacted as part of Proposition 47, "the Safe Neighborhoods and Schools Act." Section 1170.18, subdivision (f) provides:

> "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors."

substantial break), a violation of [Vehicle Code] section 10851 must be punished as a misdemeanor theft offense if the vehicle is worth $950 or less." (*Id.* at p. 110.) We asked the parties to submit supplemental briefing with respect to *Bullard*.

In their supplemental brief, the People concede that "this case should be remanded so that the trial court may address [Goodall's] eligibility for relief," in light of *Bullard*. In his supplemental brief, Goodall agrees that "the instant matter requires a remand in light of the high court's holding in *Bullard*." We agree with the parties and commend the People for their proper concessions. Accordingly, we reverse the trial court's orders denying Goodall's applications for redesignation and remand the matter to the trial court with directions to reconsider the applications in light of *Bullard*.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The underlying cases*

Between 2002 and 2013, Goodall pled guilty to five felony violations of section 10851, subdivision (a), in five separate criminal cases.

In SCD164630, Goodall admitted, as the factual basis of his guilty plea, that he "[d]rove another's car without consent and with intent to deprive the owner of possession at least temporarily."

In SCD171698, Goodall stated that he "unlawfully drove a motor vehicle without permission of the owner and with the intent of temporarily depriving the owner of said vehicle . . . ."

In SCD194211, Goodall admitted that he "drove a vehicle [without] the owner's permission [and with] intent to temporarily deprive the owner of use/possession of the vehicle . . . ."

With respect to SCD206987, Goodall admitted in his guilty plea that he "did unlawfully take or drive a [vehicle with] the intent to [temporarily or permanently] deprive the owner . . . ."

Finally, in SCD246792, Goodall stated in his guilty plea that he "did drive a vehicle that I knew to be stolen . . . ."

B. *Goodall's applications*

Goodall filed five form applications for redesignation pursuant to section 1170.18, subdivision (f) in each of the five cases. In each application, Goodall stated that he had been convicted of a "felony offense[ ] that [has] now been reclassified as [a] misdemeanor[ ]," and specified that he had suffered a conviction for a violation of the offense of unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a)) worth less than $950. Goodall also checked a box on each of the forms indicating that he had completed the sentence for the conviction referenced on the form. Finally, Goodall requested that the referenced felony conviction be reduced to a misdemeanor.

C. *The People's oppositions*

The People filed a form response in each case. In all of their responses, the People checked boxes indicating their position that Goodall was "not entitled to the relief requested" because "[n]o counts [are] eligible under . . . [section] 1170.18."

D. *The trial court's orders*

The trial court summarily denied each of Goodall's applications without a hearing. In each case, the trial court checked a box on a form order stating, "The [p]etition is denied."

E. *Goodall's appeals*

Goodall filed five notices of appeal from the court's orders. The appeals were assigned a single appellate case number.

III.

DISCUSSION

The matter must be remanded for reconsideration of Goodall's applications for redesignation in light of Bullard

Goodall claims that the trial court erred in summarily denying his applications. Goodall argues that this is so because "the record[s] of conviction do[ ] not demonstrate that the benefits afforded by Proposition 47 are unavailable to [him], as a matter of law . . . ." Goodall further contends that the matter should be remanded to the trial court for reconsideration of his applications in light of the high court's decision in *Bullard*.

The People acknowledge that, in light of *Bullard*, "the factual bases of [Goodall's] guilty pleas [do not] definitively establish that he is ineligible for relief." The People further agree with Goodall that the matters should be remanded to the trial court so that it may address Goodall's eligibility for relief in light of *Bullard*.

A. Bullard

Section 490.2[2] reduced felony offenses consisting of theft of property worth $950 or less to misdemeanors. In *People v. Page* (2017) 3 Cal.5th 1175, 1184, the Supreme Court "held that this theft-reduction provision, by its terms, applies to the subset of [Vehicle Code,] section 10851 convictions that are based on obtaining a vehicle worth $950 or less *by theft*." (*Bullard*, *supra*, 9 Cal.5th at p. 99, italics added.)[3]

"[W]hile liability for theft generally requires that the defendant have an intent to *permanently* deprive the owner of possession, section 10851 draws no distinction between temporary takings and permanent ones; it imposes liability on any person who takes a vehicle 'with intent *either* to permanently *or* temporarily deprive' the owner of possession, 'whether with *or* without intent to steal the vehicle.' ([Veh. Code,] § 10851, subd. (a), italics added.)" (*Bullard*, *supra*, 9 Cal.5th at p. 99.) In *Bullard*, the

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[2] Section 490.2 is a provision of Proposition 47. (*Bullard*, *supra*, 9 Cal.5th at p. 99.)

[3] In contrast, "convictions that are based on the 'nontheft' crime of driving a stolen vehicle after the theft is complete are not reducible to misdemeanors. [Citations.]" (*Bullard*, *supra*, 9 Cal.5th at p. 104.)

Supreme Court considered whether, given that Vehicle Code section 10851 "sweeps somewhat more broadly than the term 'theft' is ordinarily understood," (*Bullard*, *supra*, at p. 99), "Proposition 47 now requires courts to draw a distinction under [Vehicle Code] section 10851 between permanent and temporary vehicle takings—granting sentencing relief to those who take vehicles permanently but denying relief to those who take vehicles temporarily." (*Id.* at p. 100.)

In answering this question in the negative, the *Bullard* court applied the absurd consequences doctrine of statutory interpretation[4] and concluded, "We hold . . . that to interpret Proposition 47 to split the [Vehicle Code] section 10851 taking offense into two offenses—misdemeanor taking with intent to permanently deprive the owner of the vehicle, and felony taking with intent to do so only temporarily—is so patently illogical that we cannot imagine any plausible reason why voters might have intended that result." (*Bullard*, *supra*, 9 Cal.5th at p. 109.) The *Bullard* court summarized its holding as follows:

> "Proposition 47's substantive effect on [Vehicle Code] section 10851 can be summarized as follows: Except where a conviction is based on posttheft driving (i.e., driving separated from the vehicle's taking by a substantial break), a violation of [Vehicle Code] section 10851 must be punished as a misdemeanor theft offense if the vehicle is worth $950 or less. In pre-Proposition 47 cases, where the defendant seeks resentencing or redesignation

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4 "[W]hen a statute 'blindly and literally applied' would lead to 'obvious injustice and a perversion of the legislative purpose' [citation], we must instead choose a reasonable interpretation that avoids absurd consequences that could not possibly have been intended." (*Bullard*, *supra*, 9 Cal.5th at p. 106.)

> under . . . section 1170.18, the defendant bears the burden of proof to show the relevant facts . . . ." (*Id.* at p. 110.)

B. *Application*

Prior to *Bullard*, the People argued that "because the factual bases for each of [Goodall's] guilty pleas either included an intent to temporarily deprive the owner of his property or identified the underlying criminal conduct as unlawful driving rather than taking, the record of conviction showed that these convictions were not theft offenses subject to Proposition 47 relief."[5] However, the People properly acknowledge that this position is "untenable," in the wake of *Bullard*. Moreover, the People also properly concede that "the guilty pleas entered by [Goodall] do not themselves demonstrate that the benefits afforded by Proposition 47 are unavailable as to his convicted offenses, and the trial court could not have found that, as a matter of law, [Goodall] failed to state a prima facie case on that basis."

In sum, we agree with the parties that, in light of *Bullard*, the record does not establish, as a matter of law, that Goodall may not obtain redesignation of his felony convictions to misdemeanors under section 1170.18, subdivision (f). We also agree with the parties that the matters should be remanded to the trial court so that it may address Goodall's eligibility for relief on each of his applications for redesignation in light of *Bullard*.

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5 We express no opinion as to the merits of this argument.

IV.

DISPOSITION

The orders denying Goodall's applications for redesignation are reversed with directions to reconsider the applications in light of *Bullard*.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

DATO, J.