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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAD DALGLEISH,

Defendant and Appellant.

2d Crim. No. B266222  
(Super. Ct. No. 2013015534)  
(Ventura County)

Appellant Chad Dalglish appeals an order denying his application to redesignate his commercial burglary conviction as shoplifting pursuant to Proposition 47. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

Appellant was charged in a complaint with one count of commercial burglary (Pen. Code, § 459),<sup>1</sup> one count of grand theft (§ 487, subd. (a)), one count of forgery (§ 470, subd. (a)), one count of possession of a controlled substance (Health & Saf. Code,

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

§ 11350, subd. (a)), and one count of being under the influence of a controlled substance (*id.*, § 11550, subd. (a)). The first four counts were felonies with a special allegation that appellant had previously been convicted of a strike.

Appellant pled guilty to count 1, commercial burglary, and admitted the prior strike allegation. At sentencing, the trial judge struck the strike and sentenced him to eight months in prison consecutive to a 16-month sentence he was already serving from another county. It dismissed counts 2 through 5.

Appellant entered a United States Post Office, approached the counter, and asked for 50 books of stamps. Appellant wrote a check for \$460. He provided personal identification which did not match preprinted information on the check. When the clerk stepped away from the counter to verify the check, appellant grabbed stamps and envelopes worth \$1,002.88 and ran outside.

Appellant later filed an application to have the burglary conviction redesignated a misdemeanor pursuant to Proposition 47. The People opposed the application because appellant stole stamps with a value in excess of \$950. The trial court denied appellant's application.

Appellant contends that his application should have been granted because he pled guilty to entering a commercial establishment with the intent of passing a fraudulent check in the amount of \$460. He contends that because he formed the intent to steal stamps and envelopes from the counter after entering the post office, that conduct cannot be considered in connection with his Proposition 47 application. We disagree.

## DISCUSSION

On November 4, 2014, California voters approved Proposition 47, which reclassified certain drug- and theft-related offenses as misdemeanors. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 added the misdemeanor crime of shoplifting to the Penal Code. The new statute provides as follows: “Notwithstanding Section 459, shoplifting is defined 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 nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary.” (§ 459.5, subd. (a).)

After passage of Proposition 47, defendants formerly subject to being charged with felony burglary under section 459 must now be charged with misdemeanor shoplifting “if he or she (1) entered into a commercial establishment, (2) with intent to commit larceny, (3) while the establishment is open during regular business hours, and (4) took or intended to take property valued at \$950 or less. [Citation.]” (*People v. Pak* (2016) 3 Cal.App.5th 1111, 1117 (*Pak*).)

Proposition 47 also added section 1170.18, subdivision (f) to the Penal Code. That section allows a person who has completed his or her sentence for a felony who would have been guilty of a misdemeanor had Proposition 47 been in effect at the time, to apply to have the conviction redesignated as a misdemeanor. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 313-314.) Appellant had the burden of proving to the trial court that his burglary conviction met the shoplifting criteria. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880.)

“The shoplifting statute was enacted as part of the Proposition 47 voter initiative, but we apply the same interpretative principles that govern the interpretation of statutes enacted by the [L]egislature.” (*Pak, supra*, 3 Cal.App.5th at p. 1118.) Our fundamental aim is to determine the intent of the lawmakers. ““In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction.”” (*Ibid.*)

The fourth element of the shoplifting statute provides that “the value of the property that is taken or intended to be taken” does not exceed \$950. (§ 459.5, subd. (a).) “Property that is taken . . . is property over which a defendant successfully has obtained possession or control.” (*Pak, supra*, 3 Cal.App.5th at p. 1119.) “The word ‘taken’ is followed by the word ‘or.’ ‘The plain and ordinary meaning of the word “or” is well established: it indicates an intention to designate separate, disjunctive categories.’ [Citation.]” (*Ibid.*) “Considering the value of property that was intended to be taken in cases where property in fact was taken obscures the distinction mandated by the word ‘or.’ Moreover, it renders the phrase ‘property that is taken’ superfluous: if the value of property that is taken is not pertinent in a case in which property is taken, when would that value ever be relevant?” (*Id.* at p. 1120.)

Here, the value of the stamps that were taken exceeds \$950. Accordingly, appellant has failed to meet his burden of proving that his burglary conviction met the shoplifting criteria.

DISPOSITION

The trial court's order denying Dalglish's application  
is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

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Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy Public Defender, and Ben Maserang, Senior Deputy Public Defender, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Mary Sanchez and David F. Glassman, Deputy Attorneys General, for Plaintiff and Respondent.