

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.111.5.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B271356
(Super. Ct. No. 2009015559)
(Super. Ct. No. 2011009576)
(Ventura County)

Mario Hernandez appeals a postjudgment order denying his Proposition 47 applications to reclassify his second-degree burglary convictions (Pen. Code, § 459)¹ as misdemeanor convictions. (§ 1170.18, subd. (f).) The trial court found that appellant's use of stolen and altered credit cards to make purchases in the amount of \$950 or less at a commercial establishment during regular business hours did not meet the statutory definition of misdemeanor shoplifting as set forth in

¹ All statutory references are to the Penal Code.

section 459.5, subdivision (a). We reverse. (*People v. Gonzales* (2017) 2 Cal.5th 858, 862.)

Procedural History

Case No. 2009015559: In 2009, appellant attempted to purchase a Sony Playstation-3 and video game at a Blockbuster store with an altered prepaid Mastercard (count 1). Appellant used the same MasterCard to purchase two pairs of shoes (\$50.30) at Payless (count 2), and hair clippers (\$34.99) and a digital camera (\$129.99) at Rite-Aid (count 3). Appellant pled guilty to three counts of second degree burglary (§ 459) and was granted probation.

Case No. 2011009576: In 2011, appellant pled guilty to identity theft (§ 530.5, subd. (a)) and second degree commercial burglary (§ 459). The probation report stated that appellant entered a Pep Boys store and made two purchases in the amount of \$313 and \$63.83 with a stolen credit card. Appellant was sentenced to two years state prison. In case no. 2009015559, the trial court terminated probation and sentenced appellant to two years state prison, to be served concurrent to the two-year sentence in case no. 2011009576.

Appellant completed his sentence and filed applications to reduce the four burglary convictions to misdemeanor convictions under section 459.5. (§ 1170.18, subd. (f).)² Denying the applications, the trial court concluded that use

² Section 1170.18, subdivision (f), which was added by Proposition 47, 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

of an altered or stolen credit card to buy goods is theft by false pretenses, and is not a section 459.5 theft-related offense eligible for Proposition 47 relief.

People v. Gonzales

Section 459.5, which was enacted pursuant to Proposition 47, states in pertinent part: “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).” (§ 495.5, subd. (a).) Subdivision (b) provides: “Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.” (§ 495.5, subd. (b).)

In *People v. Gonzales, supra*, 2 Cal.5th 858, our Supreme Court concluded that the electorate, in passing Proposition 47, intended section 459.5 to apply to the crime of theft by false pretenses. (*Id.* at p. 862.) The court held that “defendant’s act of entering a bank to cash a stolen [and forged] check for less than \$950, traditionally regarded as a theft by false pretenses rather than larceny, now constitutes shoplifting under the statute.” (*Ibid.*) Because defendant completed the felony sentence, he could petition to have his conviction designated a misdemeanor. (*Ibid.*; § 1170.18, subds. (f) & (g).)

Under principles of stare decisis, we are bound by *People v. Gonzales, supra*, 2 Cal.5th 858. (*Auto Equity Sales, Inc.*

conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.”

v. Superior Court (1962) 57 Cal.2d 450, 455.) Reclassifying appellant's second degree burglary convictions as misdemeanors is consistent with the electorate's stated reasons for enacting Proposition 47. (See *People v. Gonzales, supra*, 2 Cal.5th at pp. 869-871.)

Disposition

The order denying the applications to reduce appellant's second degree burglary convictions to misdemeanor convictions is reversed. Because the applications satisfy the criteria set forth in section 1170.18, subdivision (f), the matter is remanded with directions to reclassify the second degree burglary convictions as misdemeanor convictions. (§§ 459.5, subd. (a), 1170.18, subd. (g).)

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kevin McGee, Judge

Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy, Cerise M. Fritsch, for Defendant and Appellant.

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