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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. MAGED L. KARAS, Defendant and Appellant.	2d Crim. No. B280175 (Super. Ct. No. A092164) (Los Angeles County)

Maged L. Karas appeals the denial of his petition to recall and resentence. He argues that Proposition 47 applies to his felony conviction for second degree burglary of a vehicle. (Pen. Code, §§ 459, 1170.18, subd. (f).)[1] We conclude that vehicle burglary is not an offense reclassified as a misdemeanor by Proposition 47. We affirm.

FACTS AND PROCEDURAL HISTORY

The Los Angeles County District Attorney charged Karas in Superior Court case number A092164 with one felony count of burglarizing a vehicle in June 1985. (§ 459.) The sparse record

[1] Unlabeled statutory references are to the Penal Code.

mainly consists of an abstract of judgment, which shows that case number A092164 was consolidated with case number A919390 and that appellant was convicted of four counts of felony vehicle burglary. There is no evidence of the value of the property taken. On August 11, 1987, after Karas pled guilty, the court sentenced him to a three-year prison term.

Karas petitioned to reclassify his felony conviction. The petition states that he was convicted of violating sections 459 and 487.1.[2] The People opposed the petition. On September 28, 2016, the trial court ruled that "auto burglary is not Proposition 47 eligible" and denied the petition.

DISCUSSION

Proposition 47 allows a person convicted of a felony to ask the court to reduce certain listed drug and theft offenses to misdemeanors. Karas agrees that the burglary statute, section 459, is *not* listed as an offense eligible for sentence reduction in section 1170.18. He contends, however, that his crime falls within the definition of petty theft in section 490.2.[3]

Interpretations of Proposition 47 are subject to de novo review. (*People v. Bush* (2016) 245 Cal.App.4th 992, 1003.) The

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[2] Section 459 includes burglary of a vehicle "when the doors are locked." Former section 487.1 is the grand theft statute.

[3] Section 490.2, subdivision (a) reads, "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor" unless the person has one or more prior convictions or is a registered sex offender. Section 490.2 is part of Proposition 47 and falls within the Penal Code chapter covering "larceny" and "theft." (§§ 484 et seq., 490a.)

statute's plain meaning controls our interpretation, unless the words are ambiguous and permit more than one reasonable interpretation. (*Ibid.*) When the words are plain, we must conclude that the voters intended the meaning on the face of the measure; we cannot "insert what has been omitted" (Code Civ. Proc., § 1858), or rewrite the law to expand its scope. (*People v. Guzman* (2005) 35 Cal.4th 577, 587; *People v. Martinez* (2016) 5 Cal.App.5th 234, 240-241.)

The statutory language in Proposition 47 is plain: it does not include the burglary statute, section 459. Neither section 490.2 nor section 1170.8 refers specifically to vehicle burglary as an offense eligible for resentencing. Proposition 47 did not affect section 459, "nor did it explicitly reduce all prior felony second degree burglary offenses to misdemeanor second degree burglary offenses." (*People v. Chen* (2016) 245 Cal.App.4th 322, 326.)

Karas was convicted of a burglary, consisting of entry into a locked vehicle with the intent to steal something or commit any felony. (§ 459.) "[T]he crime of burglary can be committed without an actual taking, as opposed to the crimes of theft, robbery, and carjacking." (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 536.) Karas's analogy between vehicle burglary and the petty theft statute is inapposite.

The theory that car burglary falls within section 490.2 was rejected in *People v. Acosta* (2015) 242 Cal.App.4th 521. Acosta sought to reduce to a misdemeanor his felony conviction of attempted second degree car burglary. The court saw no analogy between car burglary (making a crime of *entering*) and petty theft (making a crime of *taking*). It concluded, "Because nothing in the language of Proposition 47 suggests it applies to Acosta's crime, there is no merit to his argument that reclassifying his offense as

a misdemeanor is required in order to comply with the express intent of liberal construction of Proposition 47. One aspect of the express intent of Proposition 47 is to 'reduce[ ] penalties *for certain offenders* convicted of nonserious and nonviolent property and drug crimes.' [Citation.] Acosta is not a member of the class of 'certain offenders' expressly enumerated in Proposition 47." (*Id.* at p. 526.)

Burglary laws are aimed at forestalling the danger posed by the unauthorized entry of an intruder. (*People v. Gauze* (1975) 15 Cal.3d 709, 715.) Vehicles may be used for sleeping or storage of possessions. Breaking into a locked vehicle may, in itself, cause considerable damage to property. Preserving the felony status of vehicle burglary serves an important societal interest in protecting personal safety, privacy and property. (*People v. Trevino* (2016) 1 Cal.App.5th 120, 125-126.)[4]

Karas relies on *People v. Gonzales* (2017) 2 Cal.5th 858, 862, in which the Supreme Court determined that the shoplifting statute (§ 459.5) includes entry into a bank to commit a nonlarcenous theft (cashing a stolen check for less than $950).[5] *Gonzales* does not propose that breaking into a locked vehicle is "theft" or "larceny," let alone "shoplifting" in an establishment

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[4] *Trevino* involved the burglary of a recreational vehicle used as an abode; however, people may sleep in pick-up trucks, vans and ordinary cars.

[5] Section 459.5 was enacted as part of Proposition 47, and states that misdemeanor shoplifting (defined as entering a commercial establishment during regular business hours, with intent to commit larceny of property worth less than $950), cannot be charged as burglary or theft; any other entry into a commercial establishment is burglary.

open for business. (See *People v. Brown* (2012) 54 Cal.4th 314, 330 ["cases are not authority for propositions not considered"].)

The shoplifting statute—which is similar to the petty theft statute—"makes reference to no other type of burglary, and it provides no reason to believe that burglary of a locked motor vehicle is now a misdemeanor when the loss does not exceed $950. The narrowly drawn shoplifting statute reflects an intent to mitigate punishment only as to one type of offender, but not as to others." (*People v. Acosta*, *supra*, 242 Cal.App.4th at p. 527.) *Gonzales* does not assist Karas, nor does *People v. Romanowski* (2017) 2 Cal.5th 903, involving theft of access card information.

An actual taking is not an element of burglary of a locked vehicle. (*People v. Acosta*, *supra*, 242 Cal.App.4th at p. 526; see *People v. Brownlee* (1977) 74 Cal.App.3d 921, 930 [burglary is complete as soon as the defendant entered with the requisite criminal intent]; *Magness v. Superior Court* (2012) 54 Cal.4th 270, 275 [any kind of entry, complete or partial, will suffice].) The offense is completed when the defendant enters with the intent to commit either a grand or petit larceny. Thus, breaking into a locked vehicle remains a felony, regardless of the value of the property the defendant took or intended to take.

We decline to rewrite Proposition 47 to add burglary (§ 459) as an offense eligible for resentencing. The voters exercised their prerogative to decide degrees of culpability for different crimes; it is not inherently absurd to prescribe a different penalty for burglary than for a petty theft of less than $950. (See *People v. Bloomfield* (2017) 13 Cal.App.5th 647, 656 [different penalties for forgery and theft].)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Alan B. Honeycutt, Judge
Superior Court County of Los Angeles

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

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