

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD TOWNSEND,

Defendant and Appellant.

A143716

(Sonoma County  
Super. Ct. No. SCR653741)

Defendant Richard Townsend appeals from an order denying his petition for recall of sentence under Proposition 47 (Pen. Code, § 1170.18).<sup>1</sup> We affirm the order because auto burglary is not among the offenses redesignated as misdemeanors by Proposition 47 and its omission from those offenses does not violate Townsend’s rights to equal protection of the law.

**BACKGROUND**

The following facts are taken from the probation officer’s report. On July 24, 2014, Santa Rosa police officers responding to reported suspicious activity contacted Townsend and determined he was on probation with an outstanding arrest warrant. Officers found a baggie containing methamphetamine, a red cell phone, and a credit card belonging to another person in his pockets. Further investigation revealed that Townsend had broken into a car and stolen these items and a backpack also found in his possession. He admitted that he entered the car by breaking one of its windows with a

<sup>1</sup> Further statutory citations are to the Penal Code unless otherwise noted.

rock and stole the backpack, phone and a wallet. The cost to repair the car was \$438.76. The probation report does not specify the value of the stolen items.

Townsend was charged with auto burglary, possession of a controlled substance and three prison priors. On October 20, 2014 he pleaded guilty to second degree burglary and stipulated to a factual basis for the crime based on the police report. The court found his plea was voluntary and recognized a factual basis for it.

The sentencing hearing was held on November 21, 2014, shortly after Proposition 47 went into effect on November 5. (See Constitutional Provisions, 50C West's Ann. Pen. Code (2015 ed.) foll. § 1170.18, p. 465.) Townsend stated that he "wished to qualify for Prop 47" and asserted auto burglary was eligible for sentence reduction because it was "[a]rguably a grand theft," an offense eligible for redesignation under Proposition 47. The court denied the request and sentenced Townsend to the aggravated term of three years, to include two years and six months in custody followed by six months of mandatory supervision, and ordered him to pay \$438.76 in victim restitution. The remaining possession charge and enhancements were dismissed. Townsend filed this timely appeal.

## **DISCUSSION**

Townsend observes that, although auto burglary is not a specifically enumerated felony that may be redesignated as a misdemeanor by Proposition 47, offenses including the theft (§ 490.2) or shoplifting (§ 459.5) of goods not exceeding \$950 in value are subject to redesignation under the new law. His argument, as we understand it, is that he *could have been* charged with theft rather than burglary and there is no evidence that the value of the property he stole was over \$950, so his burglary conviction should be treated as a qualifying theft offense for purposes of Proposition 47. He reasons, "burglary of a motor vehicle, and theft of the contents of the same motor vehicle, which would be deemed connected for purposes of Penal Code section 654, should also be connected for the purpose of applying the theft limitation of \$950 in the present case." The argument is meritless.

Townsend was convicted of auto burglary in violation of section 459.<sup>2</sup> Section 459 is not included in the list of statutes enumerating felony offenses that qualify for redesignation as misdemeanors under Proposition 47. (§ 1170.18.) “The ameliorative provisions of Proposition 47 apply to ‘Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.’ (1170.81.)” (*People v. Acosta* (2015) 242 Cal.App.4th 521, 526 (*Acosta*)). Under this clear statutory language, auto burglary is not specified for redesignation as a misdemeanor.

Townsend also fails to persuade us that his conviction is nonetheless so akin to a theft offense that it warrants the same treatment despite the statutory language. The court in *Acosta* addressed the same contention as Townsend and explained why it fails.

“[B]urglary of a motor vehicle is [not] merely another form of theft, as theft is not an element of the offense. Burglary of a motor vehicle is committed by entry into ‘vehicle as defined by the Vehicle Code, when the doors are locked . . . with the intent to commit grand or petit larceny.’ (§ 459.) ‘[T]he crime of burglary can be committed without an actual taking, as opposed to the crimes of theft, robbery and carjacking.’ [Citation.] ‘[C]arjacking, like theft and robbery, *and unlike burglary*, is a crime centered on the felonious taking of property.’ [Citation.] *Acosta*’s comparison of burglary of a motor vehicle to theft offenses fails. [¶] Because nothing in the language of Proposition 47 suggests it applies to *Acosta*’s crime, there is no merit to his argument that reclassifying

---

<sup>2</sup> Section 459 states in part that “Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and Navigation Code, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary.”

his offense as a misdemeanor is required in order to comply with the express intent of liberal construction of Proposition 47.” (*Acosta, supra*, 242 Cal.App.4th at p. 526)

*Acosta* also rejected the defendant’s reliance on newly enacted section 459.5, which created the offense of misdemeanor shoplifting, as an indication that Proposition 47 applies to burglary offenses. “Shoplifting is committed by ‘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. . . . Section 459.5 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 . . . who engage in criminal conduct identified in Proposition 47.” (*Id.*, 242 Cal.App.4th at pp. 526–527.) *Acosta*’s reasoning, with which we concur, applies with equal force and to the same end here.

Townsend argues that equal protection principles mandate he receive the same treatment under Proposition 47 as offenders convicted of grand theft (§487). He reasons the intent to commit theft is an element of auto burglary, so there is no justification to treat those convicted of the latter more harshly than those convicted of theft. In his view, “there is no good reason at all, compelling or legitimate or otherwise, to deny Proposition 47 relief for a burglary based on the element of theft . . . but grant Proposition 47 relief to a person who commits grand theft . . . . It cannot reasonably be argued that in considering both circumstances the Legislature ‘enacted these schemes with different purposes in mind.’ ” We disagree.

*Acosta* rejected such an equal protection challenge to the disparity between Proposition 47’s treatment of offenders convicted of misdemeanor auto theft (involving losses not exceeding \$950) and offenders convicted of car burglary under section 459. Applying the rational basis standard (*Acosta, supra*, at p. 527; see *People v. Alvarez* (2001) 88 Cal.App.4th 1110, 1115–1116), the court explained that “the electorate could rationally extend misdemeanor punishment to some nonviolent offenses but not to others,

as a means of testing whether Proposition 47 has a positive or negative impact on the criminal justice system. ‘Nothing compels the state “to choose between attacking every aspect of a problem or not attacking the problem at all.” [Citation.] Far from having to “solve all related ills at once” [citation], the Legislature has “broad discretion” to proceed in an incremental and uneven manner without necessarily engaging in arbitrary and unlawful discrimination. [Citations.]’ (*Acosta, supra*, at pp. 527–528.) Moreover, the electorate could rationally view a crime that involves entry into a locked car with the intent to commit theft as meriting harsher treatment than vehicle theft, which may not. (*Ibid.*) We agree. These points dispose of Townsend’s equal protection challenges.

Finally, Townsend argues the evidence was insufficient to support his auto burglary conviction because there was no evidence the car he broke into was locked, as section 459 requires. This argument is also meritless. As a matter of common sense, we can reasonably infer the car was locked from the evidence that Townsend smashed one of the car’s windows with a rock and reached through the broken window to open the car door. Otherwise, why bother breaking a window to gain entry? In any event, Townsend stipulated to a factual basis for his plea and the trial court found such a basis existed. His plea to the burglary charge thus “ ‘operated to remove such issues from consideration as a plea of guilty admits all matters essential to the conviction.’ ” (*People v. Pinon* (1979) 96 Cal.App.3d 904, 910; *In re Troy Z.* (1992) 3 Cal.4th 1170, 1180–1181; *People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785.)

#### **DISPOSITION**

The order denying Townsend’s petition for recall of sentence is affirmed.

---

Siggins, J.

We concur:

---

Pollak, Acting P.J.

---

Jenkins, J.