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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

PATTY RAMDHANRAMJOHN,

Defendant and Appellant.

E054203

(Super.Ct.No. CR32786)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Phillip I. Bronson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Kristen Kinnaird Chenelia, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Patty Ramdhanramjohn appeals from the trial court's denial of her motion to reduce two felony burglary convictions to misdemeanors, pursuant to Penal Code section 17, subdivision (b).<sup>1</sup> We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

On June 14, 1989, Rebecca Loughmiller, who worked for a new housing development, received a phone call from Sylvia Robles, an employee at another housing development. Robles told Loughmiller to look out for some people who were going around to see different model homes. She gave a detailed description of a male and female with three children. Robles said the female was carrying a large turquoise canvas bag, which was empty when she arrived at the previous homes, but full when she left. About 15 minutes later, defendant arrived, and she matched the description of the female given by Robles. Defendant entered the sales office and Loughmiller asked if she wanted to look at some model homes. Loughmiller noticed that defendant was carrying a turquoise canvas bag that was visibly empty. Loughmiller then observed defendant and the other individuals with her visit the model homes. After they left one home, defendant's bag had something in it. Loughmiller called the police. After defendant left the third model home, her bag was bulging, and she started climbing over a fence. By the time the police arrived, defendant and the people with her were driving off in their car. The police

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

<sup>2</sup> The statement of facts is taken from the preliminary hearing transcript.

apprehended them and asked Loughmiller to identify any objects in defendant's car that were taken from the model homes. She identified six to eight towels, a stuffed spider, and a toy wagon train.

On August 11, 1989, defendant was charged by information with two counts of second degree burglary. (§ 459, counts 1 & 2.) On April 2, 1990, she pled guilty both counts.<sup>3</sup> On April 23, 1990, the court suspended the imposition of sentence and placed defendant on probation for a period of three years.

On November 7, 1990, it was alleged that defendant violated her probation by failing to report to the probation officer. A bench warrant was issued. Defendant did not appear before the court for her probation violation until July 11, 1997. Her probation was revoked. On August 12, 1997, she admitted to violating her probation. The court reinstated defendant's probation and extended it to expire on August 12, 1998.

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<sup>3</sup> We note that the information contained in the record states that the burglaries were misdemeanors. This appears to be a mistake. Second degree burglary is a wobbler offense. (*People v. Trausch* (1995) 36 Cal.App.4th 1239, 1244.) The prosecutor originally filed a felony complaint against defendant. At the preliminary hearing, defense counsel argued that charges should not be tried as felonies, but as misdemeanors. The court disagreed. Furthermore, “[w]hen a defendant is convicted (whether by a guilty plea or a no contest plea, or at a trial) of a wobbler offense, and is granted probation without the imposition of a sentence, his or her offense is ‘deemed a felony’ unless subsequently ‘reduced to a misdemeanor by the sentencing court’ pursuant to section 17, subdivision (b). [Citations.]” (*People v. Feyrer* (2010) 48 Cal.4th 426, 438-439; see also *Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 137.) Accordingly, defendant filed a motion to reduce the felonies to misdemeanors.

In a separate case, defendant was convicted of murder in 1998. (§ 187, subd. (a).) The murder was committed in 1981. Defendant was sentenced to life in state prison without the possibility of parole (LWOP).

On May 27, 2010, defendant filed a motion for reduction of her felony burglary convictions to misdemeanors, pursuant to section 17, subdivision (b)(3). The motion explained that defendant was diagnosed with terminal cancer, and that, on May 10, 2010, her doctor informed her that she had less than six months to live and she should apply for a compassionate release. She filed the paperwork for the compassionate release, but was denied. The motion also stated that defendant was notified by the Division of Adult Institutions that she met the medical criteria under section 1170, subdivision (e), to have her sentence recalled. However, in order for her to be considered for either a section 1170, subdivision (e), recall or medical parole, her LWOP sentence would first need to be reduced to life with the possibility of parole. Defendant was told that such reduction could only be accomplished through the judicial appeal process. Attached to defendant's motion was a letter from the National Association for the Advancement of Colored People (NAACP) to the Riverside County Superior Court, stating that the NAACP president had spoken with the Governor's office regarding defendant's request for compassionate release. The Governor's office allegedly "expressed interest, however realized that [defendant] had two felonies on her criminal record which would require four Supreme Court Justices to sign off on the request as well." The NAACP president expressed that she believed that, if one of defendant's felonies were reduced to a misdemeanor, the Governor

would grant a compassionate release. Thus, defendant requested the court to reduce a felony to a misdemeanor in order to “possibly assist in [defendant’s] request for a compassionate release pardon.”

A hearing on the motion was held on June 17, 2011. The court stated that it read the motion and opposition<sup>4</sup> and looked at defendant’s record. The court stated that it was “sympathetic to the plight that she’s dying, but there is [*sic*] no grounds to grant it.” Defendant’s counsel submitted on the motion, and the court denied it.

On July 13, 2011, defendant filed a petition asking the court to reconsider the June 17, 2011 denial of her motion to reduce the felony convictions to misdemeanors. She argued that, if the motion was granted, it would enable her to qualify for a compassionate release or medical parole. The petition for modification was denied.

On August 5, 2011, defendant filed a notice of appeal, challenging the June 17, 2011 denial of her motion pursuant to section 17, subdivision (b)(3). She filed an amended notice of appeal on August 8, 2011, challenging the same order.

On September 26, 2011, defendant filed a motion for reconsideration of the motion to reduce her felony convictions to misdemeanors. This motion was essentially the same as the motion filed on May 27, 2011.

A hearing on the motion for reconsideration was held on October 11, 2011. Defendant was not present, but her sister was. Defense counsel clarified the timeline of defendant’s criminal history. She informed the court that the convictions in this

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<sup>4</sup> The opposition to defendant’s motion for reduction is apparently not included in the record on appeal.

case occurred in 1990, that there was one violation of probation, that probation expired in 1998, and that defendant was currently incarcerated on her murder conviction.

Defense counsel wanted to make sure the court understood that the murder occurred in 1981, before the offenses in the instant case.

Defense counsel reviewed the facts of the instant case, and stated that it was “not one of the worst second degree burgs that we’ve all encountered.” Defense counsel then asked the court if defendant’s sister, Arletta Wright, could make a few comments. Ms. Wright proceeded to state that defendant did not know the difference between a felony and a misdemeanor, and she was told, when she pled guilty, that “it was a misdemeanor.” Ms. Wright then said that defendant was legally blind, and she could not read the paper she was signing on June 14, 1989.<sup>5</sup> Ms. Wright stated that defendant would have never pleaded if she knew it was a felony. She added that defendant’s son “was the one that took the toys.” The court asked about the towels, and Ms. Wright said the towels were not found in defendant’s possession. Ms. Wright proceeded to tell the court that her sister only had six months to live, and she wanted to die in peace at home with her children and grandchildren. Ms. Wright concluded by saying that defendant did not tell her son to steal the toys, and she was sorry that it happened. She added that it was defendant’s first offense.

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<sup>5</sup> It is unclear which “paper” Ms. Wright was referring to.

The prosecutor pointed out that defendant had committed a murder prior to the burglaries, she had other arrests in 1990, 1992, 1994, and she was arrested and pled guilty to another theft offense in 1997.

The court denied the motion for reconsideration, noting that Ms. Wright “completely skip[ped] over the fact that [defendant] killed a human being.” The court added, “And your sister pled. I mean, she was convicted of that. She had numerous theft offenses. This case itself is de minimus. It’s nothing compared to what got her in custody. What’s causing her to be dying in custody is the death of another human being.” The court then noted that, in this case, defendant stole towels with a seven-year-old boy she was teaching to steal that day. The court stated that, if this were defendant’s only case, it would be happy to dismiss it, if defendant would have led a law-abiding life. The court noted defendant’s other offenses, and stated that, other than the sympathy it gave her for the fact that she was dying, it could not find a reason—in view of her history, the life she had lived, and this case itself—to reduce her convictions to misdemeanors.

### ANALYSIS

#### The Trial Court Did Not Abuse Its Discretion in Denying Defendant’s Motion to Reduce Her Felony Burglary Convictions to Misdemeanors

Defendant contends that the trial court abused its discretion in denying her motion to reduce her felony convictions to misdemeanors under section 17, subdivision (b). She claims that the court failed to consider all relevant factors, but instead focused on her recidivism, criminal record, and the manner of her crimes. The

People's initial response is that the trial court did not have jurisdiction to hear defendant's motion for reconsideration of the motion to reduce her felonies (the second motion) because she had already filed a notice of appeal, challenging the June 17, 2011 denial. However, we note that defendant filed a motion to amend the notice of appeal to include the denial of the second motion. The People did not oppose the motion to amend, and this court granted it on January 31, 2012. Thus, assuming *arguendo* that the trial court had jurisdiction to hear the second motion, we conclude that the court did not abuse its discretion in declining to reduce the felony convictions to misdemeanors.

Section 17, subdivision (b)(3), provides that “[w]hen a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail . . . it is a misdemeanor for all purposes . . . [¶] When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, *or* on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.” (Italics added.) In other words, section 17, subdivision (b)(3), empowers the trial court to declare a wobbler offense a misdemeanor, in that situation, upon application of the defendant. (§ 17, subd. (b)(3).) The decision to reduce a wobbler offense rests with the trial court's discretion. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 (*Alvarez*)). The burden falls upon the defendant to demonstrate that the trial court's decision is arbitrary or unreasonable. (*Ibid.*) We presume the trial court acts to implement

legitimate sentencing objectives. (*Ibid.*) Moreover, the reviewing court may not substitute its views for those of the trial court. (*Id.* at p. 978.)

Factors that the court should consider in its exercise of discretion regarding section 17, subdivision (b) offenses include ““the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.”” (*Alvarez, supra*, 14 Cal.4th at p. 978.)

Here, the trial court did not abuse its discretion. The court listened to the statement by defendant’s sister, in which she essentially denied defendant’s involvement in the current offenses and, instead, placed the blame on defendant’s seven-year-old son. The court also read defendant’s motions and looked at her record. The record reflected that she pled guilty to the instant offenses and was placed on probation. A few months later, it was alleged that defendant violated her probation by failing to report to the probation officer. A bench warrant was issued. Defendant did not appear before the court for her probation violation until approximately seven years later. She admitted to violating her probation, and the court reinstated probation. The year her probation expired, defendant was convicted of a murder she had committed eight years prior to the current offenses. (§ 187, subd. (a).) She was sentenced to life in state prison without the possibility of parole. In addition, defendant apparently had other arrests in 1990, 1992, 1994, and she pled guilty to another theft offense in 1997. The court acknowledged that the current burglaries were not serious, but noted that what was “causing [defendant] to be dying in custody [was] the death of another

human being.” The court added that, if this was defendant’s only case, and she had led a law-abiding life, it would have been happy to dismiss the case. However, it could find no reason, other than the fact that she was dying, to reduce her convictions to misdemeanors. The court’s decision was not arbitrary.

Defendant asserts that an exercise of discretion under section 17, subdivision (b), “depends on all relevant factors with no single one determinative.” Nonetheless, she essentially centers her argument on one factor—her medical condition. She specifically claims that the court “did not weigh [her] medical condition against public safety.” She also contends that the court failed to consider that her rehabilitation would “not [be] served by further incarceration,” in view of her medical condition. The factors that defendant points out do not make the trial court’s decision arbitrary or unreasonable. As demonstrated *ante*, the court properly considered the nature and circumstances of the offense and defendant’s attitude toward the offense. (*Alvarez, supra*, 14 Cal.4th at p. 978.) It specifically noted that defendant stole towels with a seven-year-old boy, and she was teaching him to steal that day. Moreover, the court did consider her medical condition and stated that the fact that she was dying was the *only* reason in favor of reducing her convictions to misdemeanors.

In light of defendant’s criminal history, her attitude toward the current offenses, and the fact that she was serving a life sentence in custody for murder, we cannot say that the court abused its discretion in denying the motion to reduce her felony convictions.

DISPOSITION

The order is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

RICHLI  
J.

KING  
J.