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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.

DEBORAH OBRIEN HUNT,

Defendant and Appellant.

E062857

(Super.Ct.No. SWF1200629)

OPINION

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

Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Kristen Hernandez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Deborah Obrien Hunt (defendant) appeals from the superior court's order denying her petition under Penal Code section 1170.18.<sup>1</sup> Because defendant did not carry her burden to establish that the goods she stole had a value of \$950 or less, we affirm.

### **FACTS AND PROCEDURE**

On December 17, 2011, defendant entered a Kohl's department store and apparently stole property that included a mixer.<sup>2</sup>

On March 20, 2012, the People filed a complaint charging defendant with commercial burglary (§ 459) and receiving stolen property (§ 496, subd. (a)). The complaint specified the building defendant entered as "KOHL'S, MURRIETA" and the property she received as "MIXER BELONGING TO KOHL'S."

On May 9, 2012, defendant pled guilty to the burglary charge in exchange for the receiving charge being dismissed. Also on that date, the trial court sentenced defendant to three years of formal probation, with the condition that she serve 90 days in a work release program.

On December 12, 2014, appellant filed a petition under section 1170.18 asking to have her burglary conviction reduced to a misdemeanor. On February 3, 2015, the

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

<sup>2</sup> The complaint describes the property as "MIXER BELONGING TO KOHL'S." That is the only description of the property on the appellate record, other than the superior court's description of the items as "multiple mixers and coffee makers" in its order denying the section 1170.18 petition.

superior court denied the petition on the ground that the “loss exceeds \$950. Defendant stole multiple mixers and coffee makers.”

This appeal followed.

### **DISCUSSION**

Defendant contends the trial court’s determination that the value of the items she stole exceeded \$950 was not supported by substantial evidence because in the 2012 proceeding the People neither pled nor proved that the loss exceeded \$950. As explained below, the trial court properly denied the petition because defendant failed to carry her burden to establish that the loss exceeded \$950.

On November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) “Proposition 47 makes certain drug-and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.) Proposition 47 added section 459.5, the crime of shoplifting, as a misdemeanor. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 890; §§ 459.5, 1170.18, subd. (a).)

Defendant admits that she pled guilty to second degree commercial burglary, yet argues the superior court should have granted her petition because the People failed to establish that the value of the loss exceeded \$950. Defendant's argument misallocates the burden of proof.

Defendant was charged with second degree commercial burglary (§ 459), not shoplifting (§ 459.5). Section 459 provides that “[e]very person who enters any house, room, . . . or other building, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.” On the other hand, section 459.5 provides that “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).” (§ 459.5.) The record shows that defendant pled guilty to second degree commercial burglary. (§ 459.) “[A] guilty plea constitutes an admission of every element of the offense charged and constitutes a conclusive admission of guilt. [Citation.] It waives a trial and obviates the need for the prosecution to come forward with any evidence.” (*People v. Turner* (1985) 171 Cal.App.3d 116, 125.) Thus, the record of conviction establishes that defendant was guilty of second degree commercial burglary. (§ 459.)

Further, defendant failed to establish eligibility for resentencing under section 1170.18. “[A] petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing.” (*People v. Sherow* (2015) 239 Cal.App.4th 875, 878.) Thus, defendant had the burden of showing that the offense of which she was convicted qualified as shoplifting under the definition contained in the newly enacted section 459.5.

Specifically, she had to show the value of the property taken or intended to be taken did not exceed \$950. (§ 459.5.) She did not provide any supporting documentation with her petition and did not cite to the record or other evidence. In other words, defendant simply failed to satisfy her burden to show that she was eligible for relief. Therefore, the superior court correctly denied her petition.

**DISPOSITION**

We affirm the order denying defendant’s petition for resentencing on her conviction for second degree commercial burglary.

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RAMIREZ  
P.J.

We concur:

CODRINGTON  
J.

SLOUGH  
J.