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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.

RONALD TERRY WOODS,

Defendant and Appellant.

E064724

(Super.Ct.No. RIF1300390)

OPINION

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

Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, and Stacy A. Tyler, Peter Quon, Jr., and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ronald Terry Woods petitioned to have his felony conviction for second degree burglary (Pen. Code, § 459¹) reduced to a misdemeanor pursuant to the Safe Neighborhoods and Schools Act, enacted by the voters as Proposition 47 in the November 2014 election. The trial court denied defendant's petition, finding defendant to be ineligible for relief. Defendant appeals, contending the trial court erred in its understanding of the term "commercial establishment," as used in section 459.5, and by placing the burden of proving eligibility on defendant. We affirm.

I. BACKGROUND

In March 2013, defendant pleaded guilty to, among other things, one count of second degree burglary in violation of section 459. The plea colloquy establishes that defendant burglarized a church. Defendant was initially sentenced to probation, but after several violations, the probation sentence was revoked, and he received a sentence of 16 months in county jail with respect to that count.

In April 2014, defendant filed a petition for relief pursuant to Proposition 47, requesting that his burglary conviction be reduced to a misdemeanor count of shoplifting pursuant to section 459.5. Although the petition is signed under penalty of perjury, and asserts that defendant "believes the value of the check or property does not exceed \$950," it is signed by defendant's attorney, not defendant. The trial court denied the petition, finding that a church is not a "commercial establishment" within the meaning of section 459.5.

¹ Further undesignated statutory references are to the Penal Code.

II. DISCUSSION

A. Background Regarding Proposition 47.

“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.) As relevant to the present case, section 459.5, added by Proposition 47, redefines certain conduct that previously was punishable as felony burglary to instead be the misdemeanor offense of shoplifting. “The crime of shoplifting has three elements: (1) entry into a commercial establishment, (2) while the establishment is open during regular business hours, and (3) with intent to commit larceny of property valued at \$950 or less.” (*In re J.L.* (2015) 242 Cal.App.4th 1108, 1114; see § 459, subd. (a).)

B. Analysis.

1. Defendant Had the Burden of Showing Eligibility for Relief.

Defendant asserts that the lack of evidence in his record of conviction showing him to be ineligible for relief under Proposition 47 means that the trial court should have granted his petition. As discussed below, this assertion is backwards in several respects; defendant bears the burden of establishing his eligibility for relief, and the analysis is not limited to the record of conviction.

A defendant who files a petition under Proposition 47 bears the burden of establishing he is eligible for the relief requested. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 878-880.) “In a successful petition, the offender must set out a case for

eligibility, stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citation.] The defendant must attach information or evidence necessary to enable the court to determine eligibility.” (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137 (*Perkins*)). Such evidence may be found in the record of conviction, such as court documents or record citations, but the defendant’s showing may also include extra-record evidence; for example, defendant’s own declaration, signed under penalty of perjury, regarding the circumstances of the offense, or any other probative evidence.² (*Id.* at pp. 140-141 & fn. 5.)

2. *Defendant Failed to Carry His Burden of Showing Eligibility for Relief.*

Defendant’s petition asserts the conclusion that he is eligible for relief, but it is unsupported by any evidence establishing the circumstances of the offense, including the value of the property stolen, or that defendant’s entry was committed during the regular business hours of the burglarized establishment. On that basis alone, defendants’ petition was properly denied. (*Perkins, supra*, 244 Cal.App.4th at pp. 136-137.)

The parties dispute whether defendant could be eligible for relief under Proposition 47, regardless of the value of the property at issue or when the burglary took

² Defendant’s arguments in support of his interpretation of the burden of proof and the scope of the analysis rest largely on authority and reasoning applicable to petitions for relief under the Three Strikes Reform Act of 2012, enacted by the voters as Proposition 36. As noted in *Perkins*, however, it is at least questionable (and in our view, doubtful) that such authority is applicable in the Proposition 47 context. (*Perkins, supra*, 244 Cal.App.4th at pp. 140-141 & fn. 5.)

place, because the conviction was based on defendant's burglary of a church. Defendant argues that a church is a "commercial establishment" within the meaning of section 459.5. The People argue that a church cannot be a "commercial establishment" within the meaning of section 459.5. For the reasons discussed below, we find that the People generally have the stronger side of this argument, albeit with a caveat that may or may not be relevant to the case at bar.

Proposition 47 case law is developing and one of the many unsettled areas is the precise definition of "commercial establishment" as that term is used in section 459.5. Nevertheless, this court has recently held that the term should be construed to have "the meaning it bears in ordinary usage," that is, "a place of business established for the purpose of exchanging goods or services." (*People v. Abarca* (Aug. 12, 2016) 2 Cal.App.5th 475, 481, review granted Oct. 19, 2016, S237106.) We find no appropriate reason to depart from this construction of the statutory language. And at least as a general matter, a church does not fall within the scope of this definition.

Defendant notes that second degree burglary is often referred to as "commercial" burglary, and argues on that basis that "commercial establishment" should be interpreted broadly to include any structure, the burglary of which would constitute a second degree burglary, including a church. This argument, however, is unmoored from the statutory language defining burglary and its degrees, which does not include the term

“commercial” or “commercial establishment.”³ (See §§ 459, 460.) And it finds no direct support in the body of case law regarding burglary. There are, of course, numerous cases in which second degree burglary is described as “commercial burglary,” as defendant notes. But we have discovered no cases (in the burglary context or otherwise) in which a church is referred to as a “commercial establishment.”

Moreover, defendant’s proposed construction of the term “commercial establishment” fits awkwardly at best with the remainder of section 459.5, at least under some factual circumstances. For example, burglary of a “dwelling house” that is not “inhabited” is second degree burglary under section 460, subdivisions (a) and (b); what are the “regular business hours” of an uninhabited “dwelling house”? (See § 459.5, subd. (a).)

Nevertheless, defendant is not necessarily excluded from relief under section 459.5 just because he burglarized a church. It is at least conceivable, for example, that a church building would include a gift shop or the like. A shop, even one operated by or within a church, is, it would seem, a place of business established for the purpose of exchanging goods or services. If defendant could show that he entered such an establishment during regular business hours with the intent to commit larceny, and the value of the property at issue was less than \$950, it stands to reason that he would be

³ First degree burglary is the “burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building” (§ 460, subd. (a).) “All other kinds of burglary are of the second degree.” (*Id.*, subd. (b).)

entitled to relief under Proposition 47. Although the present record does not establish such facts, it also does not exclude the possibility of defendant making such a showing.

Because cases like *Sherow* and *Perkins* had not yet established the ground rules for making an evidentiary showing in a Proposition 47 petition when defendant filed his petition in April 2014, defendant may refile his petition, along with any appropriate evidence of his eligibility for relief. (*Sherow, supra*, 239 Cal.App.4th at p. 881.)

III. DISPOSITION

The judgment is affirmed without prejudice to subsequent consideration of a properly filed and factually supported petition.

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HOLLENHORST

Acting P. J.

We concur:

MILLER

J.

CODRINGTON

J.