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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RUDY DEMECIO NORIEGA, Defendant and Appellant.	G051673 (Super. Ct. No. 06NF1119) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Thomas A. Glazier, Judge. Affirmed.

Gerald J. Miller, 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, A. Natasha Cortina and Alastair J. Agcaoili, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Rudy DeMecio Noriega appeals from an order denying his application to redesignate prior felony convictions as misdemeanors pursuant to Penal Code section 1170.18[1] — enacted as part of Proposition 47, an initiative passed by the voters in November 2014.

In April 2006 defendant pleaded guilty to, among other charges, one felony charge of check forgery (§ 470, subd. (d)) and one felony charge of possession of a forged check (§ 475, subd. (a)). As a factual basis for the plea, defendant stated, "I unlawfully received a stolen check. I entered Cash Plus with the intent to unlawfully cash that check and used a forged California Driver's License to cash it." In December 2014, after having completed his sentence, defendant applied to have his felony convictions redesignated as misdemeanors pursuant to section 1170.18, subdivision (f). The People opposed the application because the subject check was written in the amount of $3,390.54, which defense counsel confirmed at the hearing. The court denied the application as to the two forgery counts, and defendant appealed.[2] Defendant contends on appeal that the check in question had an intrinsic value of less than $950, and thus his felony convictions would be misdemeanors under the current state of the law, entitling him to relief under section 1170.18, subdivision (f). We disagree with defendant's contention and affirm the order.

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[1] All statutory references are to the Penal Code unless otherwise stated.

[2] The court granted the application as to defendant's prior convictions, arising out of the same complaint, for receiving stolen property (§ 496, subd. (a)), second degree commercial burglary (§§ 459, 460, subd. (b)), and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)).

DISCUSSION

Section 1170.18, subdivision (f), provides, "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." Subdivision (g) states, "If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor."

The issue here is whether defendant's felony convictions for check forgery and possession of a forged check would be misdemeanors under the changes enacted by Proposition 47. Prior to the enactment of Proposition 47, forgery was a so-called wobbler, "punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170." (Former § 473, now § 473, subd. (a).) Proposition 47 amended section 473 to add subdivision (b), which designates certain violations as misdemeanors. "[A]ny person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, *where the value of the check*, bond, bank bill, note, cashier's check, traveler's check, or money order *does not exceed nine hundred fifty dollars* (*$950*), shall be punishable by imprisonment in a county jail for not more than one year," with certain exceptions not relevant here. (§ 473, subd. (b), italics added.) The issue in this appeal, therefore, is whether the "value" of the check, as that term is used in section 473, is the face value, as the People contend, or the "intrinsic value" — i.e. the de minimis value of the paper it is written on — as defendant contends.

In support of his position, defendant cites *People v. Cuellar* (2008) 165 Cal.App.4th 833 (*Cuellar*). There, the defendant was convicted of grand theft for having

attempted to use a stolen check, and then when a sales clerk grew suspicious, grabbing the check out of the sales clerk's hand. (*Id.* at p. 835.) On appeal, the defendant argued the check had no intrinsic value, and thus could not constitute theft. (*Id.* at p. 836.) Importantly, the actual value of the check was not at issue since the appeal concerned *only* the defendant's grand theft conviction for taking property "from the person of another" (§ 487, subd. (c)), and not for grand theft of property exceeding the statutory maximum for petty theft (*Id*. subd. (a)). However, to constitute any type of theft, the property must have *some* "intrinsic value." (*Cuellar*, at pp. 836-837.) In passing on this question, the court stated, without elaboration, "Defendant is correct that a forged check does not have a value equal to the amount for which it is written." (*Id.* at p. 838.) For this proposition, the court cited *United States Rubber Co. v. Union Bank & Trust Co.* (1961) 194 Cal.App.2d 703 (*United States Rubber Co.*), which we address below. The *Cuellar* court went on to hold, "Here, the fictitious check . . . had slight intrinsic value by virtue of the paper it was printed on. It also had intrinsic value as a negotiable instrument that, if legally drawn, would entitle its holder to payment on demand. Thus, it was sufficient to support defendant's conviction for grand theft from the person of the sales clerk from whom defendant snatched the check." (*Cuellar*, at p. 839.)

The issue in *United States Rubber Co.* was whether a bank could be liable in conversion for having unwittingly negotiated a forged check. Concluding the bank could not be liable, the court stated, "To say that the piece of paper upon which the lettering was printed and the wording written was the instrument which was converted, is without merit. The check was never rightfully endorsed and was not a bearer instrument; it was merely an order to pay [citation] and is of no value unless accepted. The forged instrument was in effect a nullity [citation] and worthless and could not be the subject of conversion as contemplated in this proceeding." (*United States Rubber Co., supra*, 194 Cal.App.2d at pp. 708-709.) The court reached this conclusion based on former Civil Code section 3104, which stated, "When a signature is forged or made without the

authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority." (*United States Rubber Co.*, at p. 706 fn. 1.)

Civil Code section 3104 no longer exists. The liability of banks on stolen or forged checks is now governed by section 3404 of the California Uniform Commercial Code, which does not contain the language relied on by *United States Rubber Co.* Instead, section 3404 sets forth a dizzying number of permutations of theft and forgery scenarios and describes who is liable. (Com. on Cal. U. Com. Code, 23A Pt. 2 West's Ann. Cal. Code (2002 ed.) foll. § 3404, p. 416.) The important take-away is that in most of the scenarios, the check *is* operative, and thus the current statutory scheme stands in stark contrast to former section 3104 of the Civil Code. It is no longer true, therefore, that a forged check is "in effect a nullity" as stated in *United States Rubber Co.* (*United States Rubber Co.*, *supra*, 194 Cal.App.2d at p. 709.) We thus find both *United States Rubber Co.*, and the passing comment in *Cuellar* that relied on *United States Rubber Co.*, unpersuasive.

The task before us is not to analyze the inherent nature of checks generally, but to interpret what the Legislature meant by "value of the check" in section 473, subdivision (b). "'As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.]' [Citation.] '"When the language of a statute is clear, we need go no further." [Citation.] But where a statute's terms are unclear or ambiguous, we may "look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy,

contemporaneous administrative construction, and the statutory scheme of which the statute is a part.”“ (*People v. Harrison* (2013) 57 Cal.4th 1211, 1221–1222.)

We conclude the language of section 473, subdivision (b) is clear on its face. The plain meaning of “value of the check” in this context is its face value. Defendant’s contention that the value of a check is the de minimis value of the paper it is written on leads to an absurd result — no forgery of a check could ever rise to the level of a felony. Had the Legislature intended this result, it would have simply made forgery a misdemeanor in all cases. And checks do not generally have a market value in the way that, for example, bonds do. The only reasonable alternative is the face value of a check.[3]

DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.

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[3] We note that section 473, subdivision (b), includes as potential misdemeanor forgery, in addition to a check, a “bond, bank bill, note, cashier’s check, traveler’s check, or money order . . . .” Our opinion applies only to the valuation of a check in this context. We do not decide whether a different valuation method might apply to other instruments subject to section 473, subdivision (b).