

# State appellate courts split on Prop. 47 sentencing

*New ruling on felony burglary case appears to create rift between 2nd, 4th Districts*

By Saul Sugarman

A woman's felony burglary conviction could be reduced to a misdemeanor under a 2014 state ballot initiative meant to reduce punishment for nonviolent crimes, the 2nd District Court of Appeal ruled Tuesday.

Grace Vargas pleaded guilty to second-degree burglary for attempting to cash a forged \$148 check.

The published decision appears to create a split with the 4th District Court of Appeal, which in November rejected Giovanni Gonzales' bid for resentencing and affirmed his felony conviction of second degree commercial burglary because he forged two of his grandmother's checks and cashed them for \$125 each.

James J. Koester, a Larkspur attorney who represented Grace Vargas on appeal, said he was "obviously happy" with the ruling. *People v. Vargas*, 2015 DJDAR 581.

Koester also noted Tuesday's ruling is "an absolute split down the line" with the 4th District panel opinion. *People v. Gonzales*, D067554.

Koester said Vargas' case might be a "good candidate" for state Supreme Court review but declined to speculate.

Eugene M. Hyman, a retired Santa Clara County Superior Court judge who is not involved in the case, said he "doesn't see a distinction" between going into a retail store and swiping a product as shoplifting is commonly defined and forging one's own check with nonexistent funds to have it cashed.

Hyman said he believes it is a more serious crime if a person forges someone else's check and cashes it, as Vargas was convicted of doing.

The 2nd District ruled that under Prop. 47, any burglary of a commercial establishment valued at less than \$950 should be treated as shoplifting.

The case was remanded to Los Angeles County Superior Court to be considered for resentencing as an issue of first impression.

"Whatever the common definition of shoplifting, the voters defined 'shoplifting' in [the law] to mean entry into a commercial establishment during regular business hours with the 'intent to commit larceny,'" wrote Justice Madeleine Flier in the unanimous opinion.

Hyman said the ruling was "consistent with Prop. 47," which he believes is a problem with the voter-passed law.

The state attorney general's office could not be reached for comment Tuesday.

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