

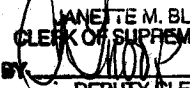
IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
BRIAN KEITH ALFORD,  
Respondent.

No. 47676

**FILED**

OCT 16 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing one count of a criminal information. Third Judicial District Court, Churchill County; David A. Huff, Judge.

Appellant State of Nevada argues that the district court erred by dismissing a petit larceny charge against Brian Keith Alford for lack of jurisdiction. The State claims that NRS 207.010(1) grants the district court jurisdiction over a petit larceny charge, if it is charged together with a habitual offender enhancement, because the enhancement increases the punishment for that charge. We disagree. The parties are familiar with the facts; therefore, we do not recount them except as necessary for our disposition.

Standard of review

Statutory construction is a question of law, which this court reviews de novo.<sup>1</sup>

---

<sup>1</sup>State v. Kopp, 118 Nev. 199, 202, 43 P.3d 340, 342 (2002).

### The district court's jurisdiction

Unless indicated otherwise, a criminal act is classified as a misdemeanor or a felony according to the available punishment.<sup>2</sup> Under NRS 205.240(2), “[a] person who commits petit larceny is guilty of a misdemeanor.”<sup>3</sup> Under NRS 4.370(3), “Justice Courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute.” On the other hand, the district courts have jurisdiction “in all cases excluded by law from the original jurisdiction of justices’ courts.”<sup>4</sup>

The status of a criminal act is not altered when it is charged together with a habitual offender charge. NRS 207.010(1) states, in pertinent part:

[A] person convicted in this State of:

(a) . . . petit larceny . . . who has previously been two times convicted . . . of any crime which . . . would amount to a felony, . . . is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison . . . .

(Emphasis added).

In Howard v. State, this court determined that:

[A]n habitual criminal proceeding does not charge a separate offense, but is held solely to determine facts, which if true, will increase punishment. It is not a separate offense to be an habitual criminal, but a status. The hearing is procedural, is not a separate crime, and does not increase

---

<sup>2</sup>NRS 193.120.

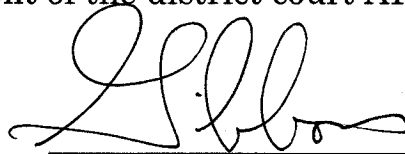
<sup>3</sup>NRS 205.240(2).

<sup>4</sup>Nev. Const. art. 6, § 6.

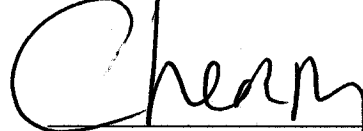
punishment of the principal offense for which a defendant is on trial.<sup>5</sup>

In this case, the district court did not err in dismissing the State's petit larceny against Alford for lack of jurisdiction. Petit larceny is the primary offense for which Alford was charged, and the habitual offender charge did not increase the offense's punishment. Petit larceny is still a misdemeanor, even when charged with a habitual offender enhancement. Therefore, we conclude that the district court correctly dismissed the petit larceny charge against Alford for lack of jurisdiction. We have considered the parties' remaining contentions and conclude that they lack merit.<sup>6</sup> Accordingly, we

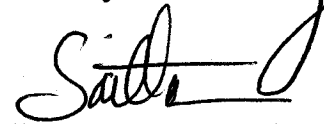
ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.

Gibbons

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

---

<sup>5</sup>83 Nev. 53, 56, 422 P.2d 548, 550 (1967) (citations omitted) (emphasis added).

<sup>6</sup>Contrary to the State's argument, NRS 484.3792 and NRS 200.485 are distinguishable from NRS 207.010. Under NRS 484.3792 and NRS 200.485, the number of offenses that a person commits determines the primary crime with which that person can be charged. Under NRS 207.010, the primary crime maintains its status. Repeat offenses merely qualify the offender for additional sentencing as a habitual offender.

cc: Hon. David A. Huff, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Churchill County District Attorney  
Churchill County Public Defender  
Churchill County Clerk