

COURT OF APPEALS OF VIRGINIA

Present: Judges Beales, Chafin and Senior Judge Bumgardner
Argued at Chesapeake, Virginia

CHELSEA NICOLE COSTON

v. Record No. 1880-15-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE RUDOLPH BUMGARDNER, III
NOVEMBER 29, 2016

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
James Clayton Lewis, Judge

Annette Miller, Senior Trial Attorney (Office of the Public Defender,
on brief), for appellant.

Eugene Murphy, Senior Assistant Attorney General (Mark R.
Herring, Attorney General; Susan Baumgartner, Assistant Attorney
General, on brief), for appellee.

Chelsea Nicole Coston appeals her conviction of petit larceny, third offense, Code § 18.2-104. She admits she committed the current larceny but maintains a prior conviction could only enhance her punishment if it was pronounced before the current offense occurred. We conclude that the predicate offense must occur before the date of the present offense, but the conviction for the predicate offense need not predate the current offense. Accordingly, we affirm her conviction.

When the defendant stole from WalMart on June 20, 2014, she had been convicted for uttering a bad check in 2013. Two days prior she also had committed a petit larceny, but she was not convicted of the offense until July 21, 2014.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

The theft from WalMart on June 20 was charged as petit larceny, third offense. The indictment stated the defendant had “previously been convicted on two or more other occasions within the Commonwealth . . . of larceny, or an offense deemed punishable as larceny” The defendant was convicted as charged in the indictment. The defendant contends the offense on June 18, 2014 could not be used to enhance her punishment because she was not convicted of that crime until after she committed the current offense.

The question of statutory construction of Code § 18.2-104 has been resolved during the pendency of this appeal in Pitts v. Commonwealth, ___ Va. App. ___, ___ S.E.2d ___ (Nov. 8, 2016). Accordingly, we affirm.

Affirmed.