

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBIN BAILEY,

Defendant and Appellant.

H034382

(Monterey County  
Super. Ct. No. SS082741A)

ORDER

THE COURT:

The above captioned opinion, which was filed on August 26, 2010, is hereby modified as follows: Insert the following footnote on page 14, second line, after "(1961) 55 Cal.2d 252, 260-261": This court expresses no opinion regarding the application of *People v. Rojas, supra*, 55 Cal.2d 252 in circumstances different from those present here. *Rojas* has been cited for the proposition that "[w]here a defendant has the requisite criminal intent but 'elements of the substantive crime [are] lacking' due to 'circumstances unknown' to him, he can only be convicted of attempt-and not the substantive crime itself. (*People v. Rojas* (1961) 55 Cal.2d 252, 257-258 . . . [because the property was not actually stolen, defendants were guilty of attempted receipt of stolen property]; see also *People v. Camodeca* (1959) 52 Cal.2d 142, 147 . . . [because the victim was not deceived by and did not rely on the false representations, defendant was guilty of attempted grand theft by false pretenses].)" (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) This case does not fit the *Rojas* scenario. Moreover, in this case, there was conflicting evidence whether

defendant had specific intent to escape and the prosecution made a deliberate decision to not prosecute defendant for attempted escape.

There is no change in the judgment.

The petition for rehearing is denied.

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ELIA, J.

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PREMO, Acting P. J.

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McADAMS, J.