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A Discussion on the Issue of Amount Accumulation of Two Theft

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Abstract

The 2013 *Supreme People's Court and Supreme People's Procuratorate's Interpretations on Several Issues of Applicable Laws of Handling Theft Criminal Cases* has made corresponding provisions on crime of theft and "repeated theft", but has not mentioned whether two offences of theft amounting to a large stolen amount is to be convicted as a crime or not. Two offences are obviously more serious than one offence, which is however not recognized as a crime. In judicial practices such cases can be found everywhere. Whether this is to condone crime or to prevent crime, public opinions are divergent.

Key words: Two theft; Crime of theft; Time limit; Amount accumulation

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INTRODUCTION

The general opinion of China's criminal law circles holds that, two offenses of theft cannot be accumulated and evaluated to be a crime. The major view is that illegal act is an administrative punishment, and if being evaluated as a crime it is suspected to be overstepped; Secondly, if an act is evaluated to be an illegal act as well as a crime, it violates the principle of prohibiting repeated evaluation in criminal law. However, some scholars have questioned that the crime of corruption, embezzlement, bribery, violation of intellectual property rights and other property crimes have been cumulative, why theft cannot be cumulative; then, cumulative amount of two theft does not conflict with the accumulative amount of three theft in two years in "multiple theft". The former mainly concerns about the infringement degree to legal rights, the latter considers more about the subjective malice. Finally, two theft offences being evaluated as a crime does not violate the prohibition principle of repeated evaluation, because the two theft offences have not been administratively punished (two theft do not include crime, and a crime as well as an illegal act within one year need to be evaluated separately, because the former and latter's accumulation will inevitably lead to violation of the prohibition principle of repeated evaluation in criminal law). The author prefers the latter view, and this article mainly analyzes that whether two thefts amounting to a large stolen amount are accumulated based on the following two cases:

Case I: The suspect Wang stole a battery from an unmanned scooter in a village in Henan Province, with a stolen amount of 480 yuan. In the same year, the suspect Wang stole 700 yuan cash in a village neighboring construction site. (Note: As per Yu Jian Hui [2010] No.5 *Provisions on the Amount Determining Standard of Theft Crime* issued by Henan Province Higher People's Court, People's Procuratorate and Public Security Department on June 12, 2010, the registration standard for a large stolen amount in Henan Province has been set to be 1,000 yuan.)

Case II: The suspect Li stole 700 yuan cash somewhere in Henan Province. In the same year he fled to steal 800 yuan cash in Jilin Province, and was arrested by Jilin police. (Note: As per Ji Gao Fa [2013] No. 114 *Provisions on the Amount Standard of Handling Theft Crime* issued by Jilin Province Higher People's Court and Jilin Province People's Procuratorate on August 1st, 2013, the registration standard for a large stolen amount in Jilin Province has been set to be 2,000 yuan.)

1. THE ISSUE OF WHETHER THE STOLEN AMOUNT OF TWO THEFT SHOULD BE ACCUMULATED

For the above two cases, one view is that firstly, a fact, an act, or a crime constitution can only be dealt with for once.....in principle the crime constitutions of several facts, several acts or several crimes should not be evaluated cumulatively; Secondly, we should not refer to the exception of dealing with cumulative amount in the crimes of corruption and bribery, but should adhere to the legal principle of crime (Zhang, 2015). The second view is that, China's crime of theft has been basically differentiated to be innocent or guilty, minor crime or felony based on the violated property value, thus as long as a perpetrator carries out theft, regardless of the number of times, the amount will be accumulated as long as the quantitative criterion has been reached (Li, 2008). Another view is that, accumulating and convicting two theft offences amounting to a large amount to be a theft crime is the analogical interpretation not conducive to the perpetrator which is prohibited by criminal law, so the stolen amounts of two theft offences should not be accumulated.

However, the author believes that two theft offenses amounting to a larger monetary amount are upgraded to be a crime is because theft crime is judged according to the stolen amount, and the cumulative amount is consistent with the constituent elements of theft crime, focusing on crime or non-crime. Before accumulation, each act of theft was not enough to reach the criterion of crime, but the cumulative amount meets the constitutive element of a crime. This amount accumulation is not to assess several acts as a single act, but just sum the amounts, not changing the number of thefts or recognizing as a behavioral offender of multiple theft. Although an individual act is not concerned to constitute a crime, two theft offenses have far more social dangers than an individual act constituting a crime, and if it's not to recognize as a crime, it will be contrary to the principle of fairness and justice and unacceptable by the people. In this case, not to accumulate the amounts is obviously contrary to the principle of fairness and justice and the principle of suiting punishment to crime.

Two thefts do not include offences which have been administratively punished. According to Article 2. 2 of 2013 *Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Applicable Law in Handling Theft Criminal Cases* (hereinafter referred to as the *Interpretation*), if the first theft has been administratively punished, the second theft within one year will be determined based on 50% more the stolen amount. Analyzing from the *Interpretation*, if one theft has been administratively punished, the second theft within one year will be inevitably determined as a crime. If one theft has been administratively punished but the second theft within one year is not determined as per above stipulation, it's not only a waste of judicial resources, but also greatly reduces the threshold to incriminate theft, and criminal law cannot play a strong role in safeguarding law and preventing crime. Therefore, it should not include violations which have been administratively punished. Secondly, it should not violate the prohibition principle of repeated evaluation. Though the first theft has received just an administrative punishment, as long as it has been punished, it should not be reevaluated otherwise it makes a repeated evaluation. A strict application of the provisions on amount accumulation of two thefts is in favor of recognition and application in judicial practices, limiting judiciary arbitrariness, regulating public power and governing the country according to law.

In China, although relevant laws and regulations concerning amount accumulation in the crimes of corruption, bribery and embezzlement of public funds are special cases, the approach is prevalent and widely recognized in property crimes. The 2013 criminal judicial interpretation stipulates that amount accumulation is not limited to a crime, but is applicable to a class of crimes. For example, "multiple acts" in intellectual property right infringement cases are described as "many acts infringing intellectual property rights" (Du, 2014). A crime being expanded to a class of crimes shows the role of amount accumulation system in property crimes. Secondly, amounts in the crimes of embezzlement, bribery and embezzlement of public funds are accumulated based on twice or more than twice acts, according to this, amounts in two thefts can be accumulated likewise. Amount accumulation in two thefts is not in contradiction with multiple theft. Multiple theft emphasizes cumulative acts, and two theft emphasizes the cumulative amount. Therefore, amounts in two theft can be accumulated. This is not analogical interpretation, but natural interpretation within the allowable scope of the law. Although legislative and judicial interpretations have not relevant provisions on two theft, with the continuous development of society, if legislative and judicial interpretations can not cover all offenses, we can use logical interpretation of criminal law to resolve problems in judicial practices, rather than use analogical interpretation prohibited by criminal law.

If the total monetary amount of two theft offences does not meet the large amount criterion, we can impose punishment and education as per administrative law in order to prevent the occurrence of repeated theft.

2. THE ISSUE OF TIME LIMIT

The Interpretation defines "multiple theft" as three theft within two years which are not necessary to be all "untreated." The applicable scope for amount accumulation stipulated by 1997 criminal law is: a)

Multiple acts; b) Untreated; c) No time limit... Regarding the time limit of two thefts, a view is that as per relevant regulations on repeatedly theft, each theft in two thefts is an offence with less social harms and subjective malice, which should be limited to one year to help collect evidence and investigate. Another view is that: Action limitation of the punishment should prevail in accordance with the relevant provisions of administrative law (Li, 2012) .

In two theft, an individual theft is subject to the action limitation of the punishment, namely according to *Administrative Punishment Law* and *Public Security Administration Law*, etc., limitation of action is two years, and the perpetrator would not be held responsible for criminal liabilities if it exceeds the limitation of two years. This will undoubtedly increase judicial resources and is not in favor of the perpetrator. The most important is that there would be interruption in limitation of action. If there is an interruption in the limitation of action, we have to recalculate limitation of action, under which circumstance the time span would be too long and not conducive to processing the case. Offences exceeding the limitation of action shall not be punished by administrative law, so they shall not still be punished by criminal law. Therefore, amount accumulation of two thefts, of course, do not include offences exceeding limitation of action.

The author holds that the time limit for two thefts should be within one year. Firstly, according to the provisions concerning multiple theft, three theft within two years... three theft within one year expanded to three theft within two years has undoubtedly reduced the threshold to incriminate repeatedly theft due to frequent theft and the complex and diverse means, which is more conducive to fighting against crimes. If two thefts are intended to fill the vulnerabilities of a single theft and two theft, it's not necessary to be two years, and less than one year is enough. Secondly, one year will undoubtedly save judicial resources and is in favor of case processing. Theft occurs highly frequently in today's society, judiciary personnel have to deal with multiple and complex cases. If the cumulative time is too long, it would undoubtedly waste too much judiciary energy and not be conducive to addressing and resolving the case. Finally, it is in favor of the perpetrator. An act after a year not punished and not accumulated is in favor of the perpetrator. The limitation of one year is undoubtedly more strict than the threshold of action limitation, playing a role in preventing crime and protecting human rights.

The starting time of offence. The calculation criterion of one year should be counted from the first illegal act, which is not a year in common sense but counted from the first offence. For example, if an offence took place on September 4th 2013, the one year should be counted from September 4th 2013 to September 5th 2014, rather than a natural year.

3. TWO THEFTS ACROSS REGIONS

The Interpretation states that, according to China's basic national conditions and regional differences, provinces, autonomous regions and municipalities decide their own implementary quantitative criteria according to their respective economic development. In Case II: Ji Gao Fa [2013] No. 114 stipulates that the "large monetary amount" for a theft of public or private properties is including or more than 2,000 yuan; The *Provisions on the Amount Determining Standard of Theft Crime* issued by Henan Province on June 12th 2010 stipulates that "large monetary amount" for a theft of public or private properties is including or more than 1,000 yuan. If the totaled stolen amount of two thefts reached the large amount criterion of Henan Province, but not yet the criterion of Jilin Province, which criterion should we abide by to conduct measurement of penalty?

Opinion I: According to the principle of in favor of the perpetrator or criminal law, the criterion of Jilin province should be adopted, namely the cumulative amount of two thefts does not meet the standard of theft crime, the perpetrator shall be deemed as innocent.

Opinion II: According to the principle of suiting punishment to crime in criminal law, the criterion of Henan province should be adopted, namely the cumulative amount of two thefts meets the large amount criterion for theft crime. The act constitutes theft crime and should be measured accordingly.

The author believes that whether it is opinion I or opinion II, there are some flaws. Opinion I is likely to encourage the perpetrator's fluke mind, resulting in the surge of petty theft in Jilin Province, seriously affecting the normal social order; As per opinion II, the infringed property is in Jilin Province. If the offence is determined in accordance with the standard of Henan Province, it seems to be contrary to the balance principle of criminal law. In judicial practices, due to the regional differences in economic development, judicial trial outcomes are quite different, increasing arbitrariness of justice.

The author holds that, due to the inter-provincial nature of the offence, the perpetrator would immediately flee after the theft was committed, leaving no trace or seldom leaving too many clues to the investigation. Additionally, investigation and settlement of inter-provincial offence requires the cooperation of polices in different regions, which potentially increase the costs of handling the case. The author holds that, taking into account the overall balance of all aspects, penalty should be measured in accordance with the criterion of location of arrest. First of all, it's conductive to save judicial resources. When a criminal is arrested at the location of the crime, it will be more direct and objective to determine the crime in accordance with the criteria of the location of crime, saving investigation costs and staff significantly. Secondly, it embodies the principle of

suiting responsibility and punishment to crime in criminal law. When a criminal has been arrested in the location of crime, he is subject to the corresponding criminal responsibilities and criminal penalties of the location of crime, which reflects modernization and civilization of legislation and justice. Thirdly, it embodies the principle of fairness and justice in criminal law. The severity of the criminal penalty based on the facts of two thefts should be determined in accordance with the crime committed and criminal responsibilities imposed.

CONCLUSION

China's existing legislation and judicial interpretations specify only that theft is determined based on the stolen amount and "multiple theft" is determined based on the act of theft which stolen amount is not cumulative. This results in that two thefts are in a vacuum and are left without anybody to concern. Although the general opinion on China's criminal law holds that two theft are not a crime, it arouses huge controversies in the academic circles and brings huge challenges to judicial practices due to acceptance of the people and pressure of the public opinion, leaving a large number of similar cases to be determined difficultly or settled hastily. As the society continues to develop and change, considering the real situation of China and regional developmental differences, the different amount criteria of theft will inevitably cause or have caused arbitrariness in judicial practices, being contrary to the legal principle of crime and punishment in criminal law and the principle of fairness and justice. The author believes that in accordance with the legal principle of crime and punishment in criminal law, an act is not deemed as a crime without explicit terms in law. If there is no supplement and improvement on second theft in judicial interpretation and to be made up by intended interpretation, though it can be convicted, it will inevitably lead to injustice in judicial practice and improper operation, and most likely to cause abuse of public power which is not conducive to safeguarding the authority of law and protecting citizens' basic human rights. Two thefts have worse nature and greater dangers to society than one theft. A result of innocence is not only contrary to the basic principles of criminal law but also unacceptable by the public.

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