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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES RIVERA,

Defendant and Appellant.

B282224

(Los Angeles County  
Super. Ct. No. NA105463)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark C. Kim, Judge. Sentence vacated; remanded for resentencing.

Robert Booher, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

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Charles Rivera, convicted of two controlled substance offenses, argues on appeal that the sentence enhancements imposed under former Health and Safety Code,<sup>1</sup> section 11370.2 must be stricken due to a recent change in the law. We agree and remand the matter for resentencing.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Rivera was convicted by jury of two counts of selling, offering to sell, or transportation of a controlled substance (§ 11379, subd. (a)). The jury found that Rivera had suffered three prior convictions for violating section 11379. Rivera admitted he had been on bail at the time of one of the offenses within the meaning of Penal Code, section 12022.1.

On the first count, the trial court sentenced Rivera to the upper term of four years for the substantive offense, plus six years pursuant to former section 11370.2 for two prior convictions and two years pursuant to Penal Code, section 12022.1. The court imposed and stayed the sentence enhancement under former section 11370.2 for Rivera's third prior conviction. On the second count, the trial court sentenced Rivera to a consecutive term of 1 year, one-third the mid-term sentence for that offense. The court stayed the sentence enhancements under Penal Code section 667.5, subdivision (b) for Rivera's prior prison terms. Rivera's total sentence was 13 years in county jail.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Health and Safety Code.

## DISCUSSION

Rivera contends, and the People agree, that the three-year sentence enhancements imposed pursuant to former section 11370.2 should be stricken, and the matter remanded for resentencing, because of a recent amendment to that statute. Senate Bill No. 180 (Stats. 2017, ch. 677), which became effective on January 1, 2018, amended section 11370.2 to limit the scope of that enhancement to apply only to prior felony convictions for a violation of section 11380. As amended, the enhancement no longer applies to Rivera's prior convictions for violations of section 11379. Absent evidence to the contrary, it is presumed the Legislature intended an amended statute reducing the punishment for a criminal offense to apply retroactively to defendants whose judgments are not yet final on the statute's operative date. (*People v. Brown* (2012) 54 Cal.4th 314, 323; *In re Estrada* (1965) 63 Cal.2d 740, 745.) Because there is no indication that the Legislature intended the recent amendments to section 11370.2 to operate prospectively only, Rivera's enhancements under the statute must be stricken.

Given that the trial court exercised discretion in imposing the original sentence, we remand the matter for resentencing to permit the trial court to reconsider its sentencing choices in light of the changed circumstances. (*People v. Calderon* (1993) 20 Cal.App.4th 82, 88 ["[i]t is perfectly proper for [the appellate] court to remand for a complete resentencing after finding an error with respect to part of a sentence"].) On remand, the trial court is directed to strike the three-year enhancements imposed pursuant to former section 11370.2 and to resentence Rivera in accordance with the applicable statutes and rules, provided that the aggregate term does not exceed the original sentence. (*People*

*v. Burbine* (2003) 106 Cal.App.4th 1250, 1256; *People v. Burns* (1984) 158 Cal.App.3d 1178, 1184.)

Rivera also argues that on remand, the trial court must consider whether to suspend execution of a concluding portion of his sentence pursuant to Penal Code section 1170, subdivision (h)(5) and California Rules of Court, Rule No. 4.415(d). Rivera may raise this matter at his resentencing hearing.

Finally, we note that the trial court stayed Rivera's prior prison term sentence enhancements under Penal Code section 667.5, subdivision (b). At resentencing, the trial court must either impose or strike these enhancements. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.)

### **DISPOSITION**

The judgment of conviction is affirmed, and the sentence is vacated. The matter is remanded to the trial court for resentencing in accordance with the principles expressed in this opinion.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.