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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. RONALD TYAWVAN WALKER et al., Defendants and Appellants.	B281533 (Los Angeles County Super. Ct. No. KA113963)

APPEAL from a judgment of the Superior Court of Los Angeles County. George Genesta, Judge. Affirmed as modified.

Peter J. Boldin, under appointment by the Court of Appeal, for Defendant and Appellant Ronald Tyawvan Walker.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant Gerald Tyrone Tyson.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Marc A. Kohm and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Gerald Tyson and Ronald Walker of sale of methamphetamine (Health & Safety Code, § 11379, subd. (a)).[1] At sentencing, the trial court imposed on each appellant a $50 criminal laboratory analysis fee (section 11372.5) as well as $145 in penalty assessments. Appellants now contend that the laboratory fee is not a fine subject to penalty assessments. While the appeal was pending, the California Supreme Court filed *People v. Ruiz* (2018) 4 Cal.5th 1100 holding that the laboratory fee is a fine.[2] We conclude this resolves in the affirmative the question of whether penalty assessments were properly imposed.

Tyson also argues, and respondent concedes, that the three-year sentence enhancement under former section 11370.2 must be stricken. We agree, and modify the judgment accordingly. We otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 10, 2016, Tyson and Walker sold a police officer a baggie of methamphetamine. On March 13, 2017, the trial court sentenced Walker to six years in state prison for a violation of section 11379, subdivision (a): the court doubled the mid-term of three years due to a prior strike conviction. Tyson was convicted of the same offense and sentenced to ten years in state prison: the court doubled the mid-term of three years due to a prior strike conviction, and imposed a section 11370.2 three-year enhancement as well as one year for a prior prison term. Appellants were ordered to pay a $50 criminal laboratory

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[1] All other statutory references unless otherwise stated are to the Health and Safety Code.

[2] We requested supplemental briefing on *Ruiz, supra,* 4 Cal.5th 1100, and both parties submitted letter briefs.

analysis fee and $145 in related penalty assessments. Tyson and Walker timely appealed.

DISCUSSION

1. *The Criminal Laboratory Analysis Fee is Subject to Penalty Assessments*

Appellants contend the trial court erred in imposing penalty assessments attached to the laboratory analysis fee because that fee is not a fine or penalty. In support of this argument, appellants rely on *People v. Webb* (2017) 13 Cal.App.5th 486 and *People v. Watts* (2016) 2 Cal.App.5th 223 which held that the laboratory analysis fee is not a fine subject to penalty assessments. In *Ruiz*, our Supreme Court expressly disapproved of those cases and held that the laboratory analysis fee is a fine. We conclude this resolves the question of whether penalty assessments apply to it.

There are "three different categories of monetary charges that may be imposed on a criminal defendant." (*Watts*, *supra*, 2 Cal.App.5th at p. 227.) "The first category of monetary charges that may be imposed includes charges to punish the defendant for the crime. [Citation.] These charges are often referred to as base fines . . . . [¶] The second category of charges that may be imposed includes charges to cover a particular governmental program or administrative cost. [Citations.] These charges are *usually* referred to as fees . . . .[3] [¶] The third category of charges includes penalty assessments, which, when applicable, inflate the total sum imposed on the defendant by increasing certain charges by percentage increments. All current penalty

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3 The "Legislature has described criminal monetary charges with a variety of terms, such as fine, fee, assessment, increment, and penalty, while sometimes assigning different meanings to the same term." (*Watts*, *supra*, 2 Cal.App.4th at p. 228.)

assessments are legislatively expressed as a certain dollar amount 'for every ten dollars ($10), or part of ($10),' for the particular *fine, penalty, or forfeiture* that is subject to the assessments. (Pen. Code, § 1464, subd. (a)(1).)" (*Id.* at p. 228 (italics added).)

The question here is whether the laboratory analysis fee is a fine or penalty subject to penalty assessments. The Supreme Court in *Ruiz* concluded that the Legislature "considered the $50 payment under the statute to be a 'fine' . . . . " (*Ruiz*, *supra*, 4 Cal.5th at pp. 1108, 1110.) Although some aspects of *Ruiz* are not present here, the Court observed that a "prerequisite" to its prior holding in *People v. Talibdeen* (2002) 27 Cal.4th 1151 "was that section 11372.5's criminal laboratory analysis fee constituted a 'fine, penalty, or forfeiture' within the meaning of Penal Code section 1464 . . . ." (*Ruiz, supra,* at p. 1120.)

Based on *Ruiz's* holding that the laboratory analysis fee is a fine, it necessarily follows that penalty assessments apply to it. (Pen. Code, § 1464, subd. (a) ["there shall be levied a state penalty . . . upon every fine, penalty, or forfeiture imposed"].) Accordingly, the trial court properly imposed penalty assessments on the laboratory analysis fee.

2. *Tyson's Conviction for Section 11372.5 No Longer Qualifies for the Three-Year Section 11370.2, Subdivision (c) Enhancement*

At sentencing, the trial court imposed, per former section 11370.2, subdivision (c), a three-year enhancement for Tyson's prior drug sales conviction under section 11352. Former section 11370.2 provided that "[a]ny person convicted of a violation of [Section 11379] . . . shall receive, in addition to any other punishment authorized by law, . . . a full, separate, and consecutive three-year term for each prior felony conviction of . . .

[Section] 11352 . . . ." (*Id.*, subd. (c).) While this appeal was pending, Senate Bill No. 180 went into effect, which amended former section 11370.2 to remove enhancements for most prior drug convictions, including convictions under section 11352.[4] Tyson contends, respondent concedes, and we agree that we should apply Senate Bill No. 180 to his case per the *Estrada*[5] rule and strike the three-year enhancement.

Generally, we do not apply statutes retroactively unless there is an express retroactivity provision or it is very clear from extrinsic sources that the Legislature intended retroactive application. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841.) The *Estrada* rule is a "specific qualification to the ordinary presumption," and provides that "[w]hen the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date." (*People v. Brown* (2012) 54 Cal.4th 314, 323; see *In re Estrada*, *supra*, 63 Cal.2d at pp. 742–748.) "The rule in *Estrada* has been applied to statutes governing penalty enhancements, as well as to statutes governing substantive offenses." (*People v. Nasalga* (1996) 12 Cal.4th 784, 792.)

We find the *Estrada* rule is applicable here. SB 180 reduces the punishment for persons, like Tyson, convicted of violating section 11352, by eliminating the three-year enhancement for each prior conviction for certain drug offenses. Further, we have

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[4] Senate Bill No. 180 maintained the enhancement for prior drug convictions involving minors, pursuant to section 11380.

[5] *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).

found no evidence to suggest the Legislature intended that SB 180 not apply to defendants whose judgments were not yet final when it became effective.

Here, Tyson's judgment was not final when SB 180 went into effect on January 1, 2018. (See *People v. Smith* (2015) 234 Cal.App.4th 1460, 1465 ["[a] judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari have expired"].) Moreover, per Senate Bill No. 180, Tyson's prior conviction under section 11352 does not qualify for a section 11370.2 enhancement. Accordingly, we vacate the three-year enhancement imposed under former section 11370.2, subdivision (c). (See *People v. Millan* (2018) 20 Cal.App.5th 450, 455–456 [applying SB No. 180 on appeal and vacating section 11370.2 enhancement].)

DISPOSITION

Tyson's judgment is modified to strike the former section 11370.2, subdivision (c) three-year enhancement. The trial court is directed to prepare an amended abstract of judgment consistent with this modification, and forward a certified copy of the amended abstract of judgment to the California Department of Corrections. In all other respects, the judgments against Tyson and Walker are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.