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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH DEMONT
ANDERSON,

Defendant and Appellant.

B282516

(Los Angeles County
Super. Ct. No. GA098719)

APPEAL from judgments of the Superior Court of Los Angeles County, Stanley Blumenfeld, Judge. Affirmed with directions.

Brad Kaiserman, under appointments by the Court of Appeal, for Defendants and Appellants.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Colleen M. Tiedemann and

Rene Judkiewicz, Deputies Attorney General, for Plaintiff and Respondent.

Defendant and appellant Kenneth Demont Anderson was convicted by jury of sale of cocaine base (Health & Saf. Code, § 11352, subd. (a)).¹ Defendant was sentenced to nine years in state prison. The court imposed the low term of three years, which it doubled under the three strikes law due to defendant's prior conviction of robbery (Pen. Code, § 211). The court imposed an additional three years pursuant to section 11370.2 based on defendant's prior conviction under section 11352. The court imposed a \$50 laboratory fine pursuant to section 11372.5 plus a \$145 penalty assessment.

Defendant raises two issues on appeal. He argues that an amendment to section 11370.2, operative January 1, 2018, eliminates the three-year enhancement for prior convictions of section 11352. The Attorney General properly concedes defendant is correct, and we accordingly order the enhancement stricken. Defendant further argues the \$145 penalty assessment was improperly imposed on the section 11372.5 laboratory fine, but if it was, the amount of the penalty assessment was not properly detailed in the abstract of judgment. We conclude the penalty assessment was properly imposed under section 11372.5, and that the

¹ Further statutory references are to the Health and Safety Code unless otherwise indicated.

abstract of judgment must be amended to reflect the penalty assessment. In all other respects, we affirm.

DISCUSSION

Application of Amended Section 11370.2

At the time of defendant's probation and sentence hearing, section 11370.2 provided for a three-year enhancement for specified felony convictions, including defendant's prior conviction under section 11352. The trial court imposed the statutory enhancement.

Section 11370.2 was amended effective January 1, 2018, to eliminate the three-year enhancement for prior convictions under section 11352.² Defendant contends, and the Attorney General properly concedes, that defendant is entitled to the ameliorative benefit of the statutory amendment. (*People v. Brown* (2012) 54 Cal.4th 314, 323

² As amended, section 11370.2 provides as follows: "(a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of imprisonment." As can be seen from the amendment, a prior conviction under section 11352 is no longer a basis for the three-year enhancement.

[“When the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, [fn. omitted] that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute’s operative date”].)

The three-year enhancement under section 11370.2 must be stricken upon issuance of the remittitur.

Penalty Assessment Under Section 11372.5

In 1998, this court held that section 11372.5, subdivision (a), requires a trial court to impose a criminal laboratory analysis fee in the amount of \$50 for violation of a designated Health and Safety Code offense. (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1519 (*Martinez*)). We agreed with the Attorney General’s argument that the \$50 fee “is also subject to mandatory penalty assessments pursuant to [Penal Code] sections 1202.4, subdivision (a)(2), 1464, and Government Code section 76000.” (*Id.* at p. 1520.) Defendant argues our decision in *Martinez* was incorrect, and that the penalty assessments do not apply to the laboratory analysis fee.

We have continued to follow the reasoning in *Martinez* (*People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*)), and several decisions are in accord with *Martinez*. (*People v. Alford* (2017) 12 Cal.App.5th 964, 974–977, review granted Sept. 13, 2017, S243340; *People v. Moore* (2017) 12

Cal.App.5th 558, 563–571, review granted Sept. 13, 2017, S243387;³ *People v. Turner* (2002) 96 Cal.App.4th 1409, 1416; *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1694–1696.) Our Supreme Court has stated that “subdivision (a) of Penal Code [fn. omitted] section 1464 and subdivision (a) of Government Code section 76000 call[] for the imposition of state and county penalties” on the laboratory analysis fee. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153.) Some recent authority takes the contrary view that the penalty assessments do not attach to the section 11372.5 fee. (*People v. Watts* (2106) 2 Cal.App.5th 223, 229–237; *People v. Martinez* (2017) 15 Cal.App.5th 659, 662–669; *People v. Webb* (2017) 13 Cal.App.5th 486, 493–499.) Until directed otherwise by our Supreme Court, we will follow this division’s decision in *Martinez*.

³ Review was granted in *Alford* and *Moore* for the following reason: “Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: May a trial court properly impose a criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and a drug program fee (Heath & Saf. Code, § 11372.7, subd. (a)) based on a defendant’s conviction for conspiracy to commit certain drug offenses?” The instant case does not involve a conspiracy charge.

The Abstract of Judgment

Defendant's remaining contention is that the abstract of judgment does not identify each component of the penalty assessments that attach to the section 11372.5 fee. In *Sharret, supra*, 191 Cal.App.4th at page 864, we observed that "[i]n Los Angeles County, trial courts frequently orally impose the penalties and surcharge discussed above by a shorthand reference to 'penalty assessments.' The responsibility then falls to the trial court clerk to specify the penalties and surcharge in appropriate amounts in the minutes and, more importantly, the abstract of judgment. This is an acceptable practice." In a similar vein, our colleagues in the Third District have held, "Although we recognize that a detailed recitation of all the fees, fines and penalties on the record may be tedious, California law does not authorize shortcuts. All fines and fees must be set forth in the abstract of judgment. (*People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [laboratory fee]; *People v. Hong* (1998) 64 Cal.App.4th 1071, 1080 [restitution fine].) The abstract of judgment form used here, Judicial Council form CR-290 (rev. Jan.1, 2003) provides a number of lines for 'other' financial obligations in addition to those delineated with statutory references on the preprinted form. If the abstract does not specify the amount of each fine, the Department of Corrections cannot fulfill its statutory duty to collect and forward deductions from prisoner wages to the appropriate agency. (*Hong, supra*, 64 Cal.App.4th at

pp. 1078–1079.) At a minimum, the inclusion of all fines and fees in the abstract may assist state and local agencies in their collection efforts. (Pen. Code, § 1205, subd. (c).)” (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

Here, the minute order from the probation and sentence hearing reflects a penalty assessment of \$145 based on the \$50 crime laboratory analysis fee, but it does not identify the component parts of the penalty assessment. The abstract of judgment reflects the \$50 section 11370.2 fee, but contains no mention of the \$145 penalty assessment. An amended abstract of judgment is required to set forth the total amount and component parts of the \$145 penalty assessment.

DISPOSITION

The three-year enhancement under Health and Safety Code section 11370.2 is stricken. The clerk of the superior court is to prepare an amended abstract of judgment reflecting the new term of imprisonment and the component parts of the \$145 penalty assessment on the crime laboratory analysis fee. In all other respects, the judgment is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KIM, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.