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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY COOK,

Defendant and Appellant.

B285411

(Los Angeles County  
Super. Ct. No. PA087539)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Terrell, Judge. Affirmed and remanded with instructions.

Laura R. Sheppard, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Colleen M. Tiedemann and Pamela C. Hamanaka, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Timothy Cook (defendant) appeals from the judgment entered after he was convicted of importing a controlled substance. Defendant challenges only his sentence, seeking retroactive application of Senate Bill No. 180, to vacate the sentence enhancement imposed under the recently amended Health and Safety Code section 11370.2.<sup>1</sup> Respondent does not oppose striking the enhancements. We affirm the judgment, but vacate the sentence and remand for resentencing.

### **BACKGROUND<sup>2</sup>**

Defendant was convicted after a jury trial of possession of a controlled substance in violation of section 11377, subdivision (a), a misdemeanor (count 1), and of importing a controlled substance in violation of section 11379, subdivision (a), a felony (count 2). Pursuant to former section 11370.2, the information alleged that defendant had suffered a prior felony conviction of violating section 11379. Following the waiver of his right to a trial, defendant admitted the prior conviction.

On August 10, 2017, the trial court sentenced defendant to a total of six years in county jail, comprised of the middle term of three years as to count 2, plus three years under section 11370.2. A six-month concurrent term for count 1 was also imposed. The court suspended execution of the term in count 2, and ordered that upon his release from jail defendant be placed on mandatory supervision for three years, in order to complete a drug treatment and rehabilitation plan. Defendant was given 84 days of custody credit.

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

<sup>2</sup> To resolve defendant's challenges to the sentence, it is unnecessary to summarize the trial evidence.

Defendant filed a timely notice of appeal from the judgment.

### **DISCUSSION**

Defendant seeks retroactive application of Senate Bill No. 180, which amended section 11370.2, effective January 1, 2018. (See Stats. 2017, ch. 677.) Defendant asks that we strike the three-year sentence enhancement imposed pursuant to section 11370.2, and respondent does not oppose.

As amended, section 11370.2 applies only to prior felony convictions for a violation of section 11380. Thus the enhancement no longer applies to prior convictions for violations of section 11379, defendant's prior conviction. 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.) The Legislature did not indicate that the amendments to section 11370.2 were intended to operate prospectively only, therefore we agree they must be applied retroactively. Defendant's sentence thus may not be enhanced due to the prior conviction under section 11379.

In sentencing defendant, the trial court exercised considerable discretion in fashioning a sentence of six years (the middle term plus the enhancement), and then splitting the term by suspending execution of half of it for purposes of completing an addiction treatment program. The trial court should thus be given the opportunity to reconsider its discretionary sentencing choices in light of the changed circumstances. (See *People v. Calderon* (1993) 20 Cal.App.4th 82, 88.) We therefore vacate the sentence to permit the trial court the opportunity to reconsider the entire sentence in accordance with the applicable statutes and

rules, provided that the aggregate term does not exceed the original sentence. (See *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1256.)

**DISPOSITION**

The judgment of conviction is affirmed. The sentence is vacated and the trial court is directed to strike the three-year enhancement imposed pursuant to section 11370.2. The matter is remanded for the trial court to resentence defendant to a term not exceeding the original sentence.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT