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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.

JOSE BALDEMAR IZAR,

Defendant and Appellant.

B293932

(Los Angeles County
Super. Ct. No. MA067205)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles A. Chung and Daviann L. Mitchell, Judges. Affirmed as modified.

California Appellate Project, Richard Lennon and Ann Krausz, 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, Scott A. Taryle and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

By means of a plea agreement, Jose Baldemar Izar pleaded nolo contendere to possession for sale of a controlled substance (Health & Saf. Code,¹ § 11378) and admitted three prior convictions within the meaning of section 11370.2. Izar argues that the sentence enhancements imposed for his prior convictions under section 11370.2 must be stricken, and he also requests that this court independently review the record pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) to determine whether the trial court erred when it denied his motion to unseal, quash and traverse the warrant. We strike the section 11370.2 sentence enhancements and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Izar was charged with two counts of possession for sale of a controlled substance (§ 11378); resisting, delaying, or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)); two counts of resisting an executive officer (Pen. Code, § 69); and driving with suspended or revoked driving privileges (Veh. Code, § 14601.1, subd. (a)). It was alleged that he had been released on bail or on his own recognizance when he committed three of the offenses; that he had suffered four prior convictions and served prison terms for those offenses within the meaning of Penal Code section 667.5, subdivision (b); and that he had previously been convicted three times of violating section 11378 and once of violating section 11379 for the purposes of section 11370.2 and Penal Code section 1203.07, subdivision (a)(11).

¹ Unless otherwise indicated, all further references are to the Health and Safety Code.

Izar unsuccessfully moved to unseal, quash, and traverse the search warrant. Subsequently, Izar entered a negotiated plea in which he pleaded nolo contendere to one count of possessing a controlled substance for sale and admitted three prior convictions for the purposes of section 11370.2. The remaining charges and allegations were dismissed pursuant to the plea agreement. Izar was sentenced to the upper term of three years for the substantive offense, plus nine additional years pursuant to section 11370.2 for the prior convictions, for a total sentence of 12 years.

This court granted Izar's application for relief from the failure to file a notice of appeal. Izar appeals.

DISCUSSION

I. Section 11370.2 Enhancements

Izar contends, and the People agree, that the three three-year sentence enhancements imposed pursuant to section 11370.2 should be stricken because of an amendment to that statute. Senate Bill No. 180 (Stats. 2017, ch. 677), which became effective on January 1, 2018, amended section 11370.2, subdivision (a) 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 Izar's prior convictions for violations of section 11378 and 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 amendments to section 11370.2 to operate

prospectively only, Izar's enhancements under the statute must be stricken.

II. Independent Review of Search Warrant Affidavit

All or any part of a search warrant affidavit may be sealed if necessary to protect the identity of a confidential informant. (Evid. Code, § 1041; *Hobbs, supra*, 7 Cal.4th at p. 971.) “When a defendant seeks to quash or traverse a warrant where a portion of the supporting affidavit has been sealed, the relevant materials are to be made available for in camera review by the trial court.” (*People v. Galland* (2008) 45 Cal.4th 354, 364.) “The court should determine first whether there are sufficient grounds for maintaining the confidentiality of the informant’s identity. If so, the court should then determine whether the sealing of the affidavit (or any portion thereof) ‘is necessary to avoid revealing the informant’s identity.’ [Citation.] Once the affidavit is found to have been properly sealed, the court should proceed to determine ‘whether, under the “totality of the circumstances” presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was “a fair probability” that contraband or evidence of a crime would be found in the place searched pursuant to the warrant’ (if the defendant has moved to quash the warrant) or ‘whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit, including any testimony offered at the in camera hearing’ (if the defendant has moved to traverse the warrant). [Citation.]” (*Ibid.*; *Hobbs*, at pp. 972-975.)

Pursuant to Izar’s request, which the People do not oppose, we have reviewed the entire record, including the search warrant, the sealed and unsealed portions of the affidavit, and

the transcript of the in-camera hearing conducted by the trial court. Based on our independent review of those materials, we conclude it is not reasonably probable Izar would have prevailed on any aspect of his motion to unseal, quash or traverse the warrant. The trial court acted well within its discretion in determining valid grounds existed for maintaining the informant's confidentiality, and that sealing a portion of the affidavit was necessary to avoid revealing the informant's identity. We have examined the entire affidavit for possible misleading statements or omissions and have found nothing that leads us to suspect any material misrepresentations or omissions were made. Under the totality of the circumstances, there was a fair probability that execution of the warrant would lead to contraband or evidence of a crime at the location to be searched. Accordingly, the trial court properly denied Izar's motion to unseal, quash, and traverse the warrant.

DISPOSITION

The judgment is modified to strike the three three-year enhancement terms imposed pursuant to Health and Safety Code section 11370.2. The judgment is affirmed as modified. The superior court is ordered to prepare an amended abstract of judgment reflecting the modified judgment and to forward a copy to the Department of Corrections and Rehabilitation.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.