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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.

SANDRA RITCHIE,

Defendant and Appellant.

B283208

(Los Angeles County
Super. Ct. No. NA103674)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary J. Ferrari, Judge. Affirmed in part and remanded with directions.

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, and Zee Rodriguez, Acting Supervising Deputy Attorney General, for Plaintiff and Respondent.

Sandra Ritchie appeals the judgment entered following a jury trial in which she was convicted in count 1 of the sale of methamphetamine (Health & Saf. Code,¹ § 11379, subd. (a)) and in count 2 of the possession of methamphetamine for sale (§ 11378). The court found that appellant had suffered two prior convictions for the sale of a controlled substance under section 11370.2, subdivision (c). The trial court denied probation and imposed an aggregate sentence of 8 years in county jail, consisting of the low term of 2 years on count 1, a concurrent term of 16 months on count 2, and 6 years (3 years each) for the two prior drug sale convictions.

Appellant and the Attorney General agree that in light of the recent amendment to section 11370.2, both of the three-year enhancements imposed under that statute must be stricken. We concur and remand the matter to the trial court for resentencing to strike the three-year enhancements imposed pursuant to section 11370.2. On remand, the trial court may reconsider the entire sentence, including whether to suspend execution of a concluding portion of the new sentence and impose a period of mandatory supervision in accordance with rule 4.415(a) of the California Rules of Court.

Finally, appellant requests, and respondent does not oppose, appellate review of the hearing on appellant's *Pitchess*² motion for abuse of discretion. Having conducted our review of the *in camera* proceedings, we find no abuse of discretion.

¹ Undesignated statutory references are to the Health and Safety Code.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

DISCUSSION³

I. The Amendment to Section 11370.2 Applies to Appellant's Case and Requires that the Three-Year Enhancements Imposed Under Section 11370.2 Be Stricken

Appellant's sentence included two three-year enhancements imposed pursuant to section 11370.2, subdivision (c) because of two prior convictions for the possession and sale of controlled substances under sections 11378 and 11379, respectively. However, a recent amendment to the law limits the imposition of an enhancement under section 11370.2 to those cases in which a person has suffered a prior conviction under section 11380. (Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018 (Sen. Bill No. 180).) As an ameliorative amendment with no express saving clause,⁴ Senate Bill No. 180 applies to appellant's case and requires remand to the trial court to strike the enhancements under

³ Because the facts of the underlying offense are not in dispute, we omit the traditional statement of the facts from the opinion. (*People v. Reyes* (2016) 3 Cal.App.5th 1222, 1225, fn. 3.)

⁴ Black's Law Dictionary (10th ed. 2014) defines "saving clause" as a "statutory provision exempting from coverage something that would otherwise be included." In this context, a saving clause would preserve a penalty that would otherwise be lost with the repeal or amendment of a statute. The rule at common law was that the "outright repeal of a criminal statute without a saving clause bars prosecution for violations of the statute committed before the repeal." (*Sekt v. Justice's Court* (1945) 26 Cal.2d 297, 304.)

section 11370.2 and resentence appellant accordingly. (*In re Estrada* (1965) 63 Cal.2d 740, 744–745 (*Estrada*).)

We apply a de novo standard of review to the question of whether a statute applies retroactively. (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 183.)

The general rule of statutory construction holds that in the absence of any indication of a contrary intent in the statute, the Legislature is presumed to have intended only the prospective, not retroactive, operation of the statute. (Pen. Code, § 3; *Estrada, supra*, 63 Cal.2d at p. 746.) In *Estrada*, our Supreme Court announced an important qualification to that rule: “When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.” (*Estrada, supra*, 63 Cal.2d at p. 745; *People v. Brown* (2012) 54 Cal.4th 314, 323 (*Brown*).) Accordingly, absent evidence to the contrary, courts will presume “the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute’s operative date.” (*Brown*, at p. 323.)

Previously, when a person was convicted of section 11378 or 11379, former section 11370.2, subdivision (c) required the imposition of “a full, separate, and consecutive three-year term for each prior felony conviction of . . . Section 11378, . . . 11379,

... [or] 11380.” As amended, section 11370.2, subdivision (c) limits the enhancement to persons whose prior conviction is a violation of section 11380. (Sen. Bill No. 180.)

The Attorney General concedes that the amendment to section 11370.2, subdivision (c) represents a “legislative mitigation of the penalty for a particular crime,” and in the absence of a saving clause, must be applied retroactively to any case not yet final on the operative date of the amendment. (*Brown, supra*, 54 Cal.4th at p. 323.) Respondent further acknowledges that appellant did not suffer any prior convictions under section 11380, and, because her case is on appeal and the time for filing a petition for certiorari has not yet expired, her conviction is not yet final. (See *People v. Kemp* (1974) 10 Cal.3d 611, 614; *People v. Smith* (2015) 234 Cal.App.4th 1460, 1465.)

We therefore conclude the amendment to section 11370.2, subdivision (c) applies retroactively to appellant’s case. The matter is remanded to the trial court to strike both of the three-year enhancements and to resentence appellant accordingly.

II. On Remand, the Trial Court May Consider All Sentencing Options, Including Whether to Suspend Execution of a Concluding Portion of the New Sentence as a Period of Mandatory Supervision

Appellant contends the trial court erred by failing to include a period of mandatory supervision as the concluding portion of appellant’s sentence in accordance with Penal Code section 1170, subdivision (h)(5) and California Rules of Court, rule 4.415(a). Respondent asserts that appellant’s failure to object at trial forfeits this claim. But for the necessity to remand the matter for resentencing, we might agree with the Attorney General’s forfeiture argument. However, in striking the three-

year enhancements and resentencing appellant on the current convictions, the trial court is entitled to reconsider the full range of sentencing options and impose a lawful sentence consistent with the court's original and presumably unchanged sentencing goals. (*People v. Hill* (1986) 185 Cal.App.3d 831, 834; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1258.) Among those sentencing choices is the option to impose a period of mandatory supervision as a concluding part of the sentence. (Pen. Code, § 1170, subd. (h)(5); Cal. Rules of Court, rule 4.415.)

Because of the inherently integrated nature of a felony sentence, courts have long recognized that “[w]hen a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components. The invalidity of one component infects the entire scheme.” (*People v. Hill, supra*, 185 Cal.App.3d at p. 834; *People v. Burbine, supra*, 106 Cal.App.4th at p. 1258; see *People v. Castaneda* (1999) 75 Cal.App.4th 611, 613–614; *People v. Craig* (1998) 66 Cal.App.4th 1444, 1450–1452; *People v. Calderon* (1993) 20 Cal.App.4th 82, 88; *People v. Rojas* (1988) 206 Cal.App.3d 795, 802.)

Accordingly, on remand, the trial court in this case may reconsider the entire sentence, including whether to suspend execution of a concluding portion of the new sentence as a period of mandatory supervision.

III. The *Pitchess* Hearing

The trial court granted appellant's *Pitchess* motion for the personnel records of Detective David Strohman and conducted an

in camera hearing to determine which, if any of the records were discoverable. At the conclusion of the hearing, the trial court ordered certain materials turned over to the defense, subject to a protective order limiting the use of that material. Appellant has requested that this court independently review the sealed records of the *Pitchess* hearing to assess whether the trial court properly ordered all discoverable material turned over to the defense.

We have reviewed the sealed transcript of the proceedings and conclude that the trial court did not abuse its discretion in limiting discovery to particular records. (*People v. Hughes* (2002) 27 Cal.4th 287, 330; *People v. Landry* (2016) 2 Cal.5th 52, 73–74.)

DISPOSITION

The matter is remanded to the trial court for resentencing to strike the three-year enhancements imposed pursuant to Health and Safety Code section 11370.2. On remand, the trial court may reconsider the entire sentence, including whether to suspend execution of a concluding portion of the new sentence and impose a period of mandatory supervision in accordance with rule 4.415(a) of the California Rules of Court. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.