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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. MICHELLE R. CORONA, Defendant and Appellant.	B234220 (Los Angeles County Super. Ct. No. NAO87798)

APPEAL from a judgment of the Superior Court of Los Angeles County. Tomson T. Ong, Judge. Affirmed.

Sarah A. Stockwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Michelle R. Corona of felony possession of methamphetamine (count 1) (Health & Saf. Code, § 11377, subd. (a)). The trial court found that defendant had suffered one prior prison term (Pen. Code, § 667.5, subd. (b)),[1] and one prior serious or violent felony conviction (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)). The trial court sentenced defendant to a total of seven years, consisting of the upper term of three years, doubled pursuant to the three strikes law, plus one year for the prior prison term enhancement.

Defendant appeals on the grounds that: (1) her rights to due process and a fair trial were violated when the trial court denied her *Pitchess* motion[2] without conducting an in camera hearing; (2) she is entitled to day-for-day conduct credits under the current version of section 4019 under equal protection principles; and (3) the trial court abused its discretion and committed reversible error when it denied defendant's *Romero* motion[3] and her motion to reduce her offense to a misdemeanor under section 17, subdivision (b).

FACTS

On January 15, 2011, at approximately 7:40 p.m., Long Beach police officers Matthew George and Paul Luyben stopped a Toyota 4Runner in which defendant was the passenger. The car had illegally tinted windows, and the driver failed to signal before turning into a parking lot. Officer George observed defendant while Officer Luyben contacted the driver, who had stepped out of the car.

Officer George subsequently approached defendant and spoke to her through the open passenger-side window. He asked defendant for her identifying information, and she spontaneously told him that she had a warrant for her arrest. Officer George asked defendant to step out of the car, and he patted her down for weapons. Defendant was

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1 All further references to statutes are to the Penal Code unless stated otherwise.

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

3 *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

made to walk to the front of the police car and put her hands on the bars. Officer George confirmed that defendant had a warrant for her arrest. Officer George then placed defendant in handcuffs.

Officer George searched a backpack belonging to the driver, who had been placed under arrest, and found marijuana. At that point, Officer George asked defendant if she "had anything on her." Defendant said she "had meth in her bra." Officer George immediately asked for a female officer to assist, and Officer Leticia Gamboa arrived. After being briefed, Officer Gamboa searched defendant's bra in the place defendant indicated and found a white folded piece of paper containing a crystal-like substance.

Gregory Gossage, a criminalist for the City of Long Beach Police Department, tested the substance found on defendant's person. The substance tested positive for methamphetamine and weighed .30 grams. Gossage believed that this was a usable quantity and was consistent in amount with many of the samples he had seen.

DISCUSSION

I. *Pitchess* Motion

A. Relevant Authority

We review the trial court's ruling on the *Pitchess* motion for abuse of discretion. (*People v. Prince* (2007) 40 Cal.4th 1179, 1286.) "[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. (Evid. Code, § 1043, subd. (b).) . . . A showing of good cause is measured by 'relatively relaxed standards' that serve to 'insure the production' for trial court review of 'all potentially relevant documents.' [Citation.] If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations (see Evid. Code, § 1045, subds. (b)-(e)), 'the trial court should then disclose to the defendant "such information [that] is relevant to the subject matter

involved in the pending litigation."' [Citations.]" (*People v. Gaines* (2009) 46 Cal.4th 172, 178-179.)

As our Supreme Court reiterated in *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 71: "We discussed what constitutes a good cause showing of materiality in *Warrick v. Superior Court* (2005) 35 Cal.4th 1011 (*Warrick*). The supporting affidavit 'must propose a defense or defenses to the pending charges.' (*Id*. at p. 1024.) To show the requested information is material, a defendant is required to 'establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events.' (*Id*. at p. 1021.) . . . [¶] Counsel's affidavit must also describe a factual scenario that would support a defense claim of officer misconduct. (*Warrick, supra,* 35 Cal.4th at pp. 1024-1025.) 'That factual scenario, depending on the circumstances of the case, may consist of a denial of the facts asserted in the police report.' [Citation.] 'In other cases, the trial court hearing a *Pitchess* motion will have before it defense counsel's affidavit, and in addition a police report, witness statements, or other pertinent documents. The court then determines whether defendant's averments, "[v]iewed in conjunction with the police reports" and any other documents, suffice to "establish a plausible factual foundation" for the alleged officer misconduct and to "articulate a valid theory as to how the information sought might be admissible" at trial.' (*Id*. at p. 1025.)"

B. Proceedings Below

Defendant filed a *Pitchess* motion requesting information related to accusations that Officer Luyben and Officer George engaged in acts of excessive force, bias, dishonesty or other acts of misconduct.[4] The motion stated that Officer George claimed

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[4] The motion states in two places that the defendant was not making any representations that excessive force was used by either officer, but in another place, the

that defendant told him she had traffic warrants before he arrested her. Defendant claimed that Officer George placed handcuffs on her, and she then told him about her traffic warrants. She was therefore arrested without probable cause. Defendant included Officer Luyben in the motion because he wrote the report giving Officer George's version of events.

In her declaration, defense counsel stated that Officer George asked defendant to step out of the car and asked her if she had guns, drugs, or "anything like that" as a precaution. He then handcuffed her. Defendant told him she had traffic warrants after he handcuffed her. Officer George then told defendant, "Tell us what's in the car and we'll let you go on a traffic warrant." He told defendant that it would make it easier if she told him if she had anything on her. He stated, "Maybe it will just disappear." Only then did defendant say that she had something in her bra. Counsel asserted that, "in order to challenge the credibility of these officers at trial in this matter, defendant intends to present evidence of prior acts of similar misconduct and/or dishonesty in general by these officers that would tend to bolster the defense that the testimony of the officer in this matter is not credible." Counsel reiterated these arguments orally at the *Pitchess* hearing. The attorney for the City of Long Beach argued that there was no dispute that defendant had methamphetamine in her bra, according to counsel's declaration.

The trial court stated that a traffic warrant is an "arrestable" offense. Whether defendant made her statements "before or after is of no consequence." None of the officer's statements were untrue, since he had discretion not to arrest defendant on the misdemeanor. The trial court found no basis to request an in camera review of the police officers' records.

C. No Abuse of Discretion

We conclude the trial court did not abuse its discretion. The fact that defendant had methamphetamine in her bra was not disputed in defense counsel's declaration. The

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motion requests evidence of acts of excessive force by the officers. To the extent that defendant requested evidence of acts of excessive force, her motion was overbroad.

only issue was whether it occurred before or after she was handcuffed. Because defendant did not offer any innocent explanation for the presence of contraband on her person, she therefore did not specify any police misconduct that would have supported a defense at trial. (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1317.) Even if true, defense counsel's assertions regarding the timeline of events had no meaningful bearing on the defense, which focused on the negligible amount of the found substance and questioning the nature of the substance. Although good cause is measured by "'relatively relaxed standards,'" there is nevertheless a standard that must be met. (*People v. Gaines*, *supra,* 46 Cal.4th at p. 179.) Defendant's *Pitchess* motion failed to make an adequate showing of good cause and was properly denied.

Moreover, even if the trial court erred in failing to grant in camera review, defendant is required to show that she was prejudiced. (*People v. Hustead* (1999) 74 Cal.App.4th 410, 418; *People v. Memro* (1985) 38 Cal.3d 658, 684, overruled on another point in *People v. Gaines*, *supra*, 46 Cal.4th at p. 181, fn. 2 ["'It is settled that an accused must demonstrate that prejudice resulted from a trial court's error in denying discovery.'"].) To establish prejudice, defendant must show that there was a reasonable probability that the outcome of the case would have been different had information been disclosed to the defense. (*People v. Hustead*, at p. 422.) Given that defendant never denied that she carried methamphetamine in her bra and admitted doing so to Officer George, there is no reasonable probability that the jury would have found she did not commit the offense charged. The required elements of the offense (the nature of the substance and a quantity that was "an amount sufficient to be used as a controlled substance") were sufficiently shown, despite the defense attempt to disparage the testimony of the drug expert and Officer George. (See CALJIC Nos. 12.00 & 12.32.) Finally, although defense counsel stated more than once in argument that Officer George and Officer Gamboa had gotten together and fixed their stories, defense counsel could not go so far as to assert that they planted the evidence, given defendant's admission. Defendant suffered no prejudice from the denial of discovery.

II. Conduct Credits

A. Defendant's Argument

Defendant contends that, under the version of section 4019 effective October 1, 2011, she should have been granted "day-for-day" credits for the presentence time she spent in county jail before her conviction. Defendant cites *In re Kapperman* (1974) 11 Cal.3d 542, 544-545 (*Kapperman*) to support her argument that a new statute providing for presentence credits for prison inmates must be retroactively applied to all inmates by virtue of the equal protection clauses of the state and federal Constitutions.

B. No Additional Credits Merited

Section 4019 applies only to credits for work and good behavior, otherwise known as "conduct credits." (*People v. Brown* (2012) 54 Cal.4th 314, 317 (*Brown*).) As defendant acknowledges, the version of section 4019 effective October 1, 2011, by its express terms applied only to defendants whose crimes were "committed on or after October 1, 2011." Defendant's crime was committed on January 15, 2011.

In *Brown*, our Supreme Court rejected a claim similar to defendant's. In that case, the version of section 4019 that was in effect during Brown's local custody and on the date of his sentencing (July 24, 2007) allowed for two days of conduct credits for every four days spent in local custody. (*Brown*, *supra*, 54 Cal.4th at p. 318 & fn. 4, citing § 4019, subd. (f), as amended by Stats. 1982, ch. 1234, § 7, p. 4553.) Brown appealed, and his conviction was affirmed on January 13, 2010. (*Brown*, at p. 318.) This was 12 days before the operative date (January 25, 2010) of a version of section 4019 that allowed prisoners to earn two days of conduct credits for every two days spent in local custody. (*Brown*, at p. 318 & fn. 5.) Brown filed a petition for rehearing on January 29, 2010, and the Court of Appeal granted the petition, awarding him additional conduct credits that retroactively covered the entire 62 days he had spent in local custody before his conviction. (*Id*. at pp. 318-319.) The People filed a petition for review. In his answer, Brown argued, inter alia, that equal protection principles required retroactive application. (*Id*. at pp. 319, 328.)

In addition to rejecting Brown's argument that former section 4019 applied retroactively (*Brown, supra*, 54 Cal.4th at pp. 320, 323-328), the *Brown* court rejected Brown's equal protection argument. *Brown* noted that "'"[t]he first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner."' [Citation.] 'This initial inquiry is not whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged."' [Citation.]" (*Id.* at p. 328.) The court concluded that prisoners who served time before the amendment went into effect were not similarly situated to those who served after the effective date, because "the important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response." (*Id.* at pp. 328-329.) The *Brown* court rejected Brown's argument, also set forth by defendant in this case, that *Kapperman, supra,* 11 Cal.3d 542, required a finding that the preamendment and postamendment prisoners were similarly situated. *Brown* pointed out that credit for actual time served, the issue in *Kapperman,* is granted without regard to a prisoner's conduct. (*Brown*, at p. 330.)

Although *Brown* dealt with a different amendment of section 4019 than the amendment at issue here, the same reasoning applies. In *Brown*, the Court of Appeal erroneously awarded the defendant conduct credits under a version of section 4019 that took effect after he was sentenced. Defendant seeks to be awarded conduct credits pursuant to a version of section 4019 that applies only to crimes committed on a date subsequent to the date she committed her crime. The effective date of the amendment to section 4019 was also subsequent to the date defendant was sentenced.[5] The fact that the purpose of the amendment was to address a fiscal emergency declared by the Governor

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5 Defendant was sentenced on June 30, 2011.

rather than expressly to increase the incentives for good conduct during local custody is of no moment. This notion was rejected in *Brown* as a basis for construing the legislative intent to allow for retroactive application of the amendment. (*Brown, supra*, 54 Cal.4th at pp. 321-322 & fn. 9.)

Following the reasoning of *Brown*, we conclude that defendant's arguments that equal protection principles require that she be granted additional conduct credits without regard to the date her crime was committed are without merit.

III. Denial of Motions based on *Romero* and Section 17(b)

A. Defendant's Argument

Defendant contends that the trial court abused its discretion in denying her motions under *Romero* and section 17, subdivision (b) solely because of her criminal record. She argues that her sentence of seven years for having "a couple of doses" of methamphetamine was unjust. The trial court's refusal to consider mitigating factors departed from the applicable legal standards, and the case should be remanded for reconsideration of defendant's motions.

B. Relevant Authority

A court's power to dismiss a prior conviction is to be limited by the concept that the dismissal should be in the """furtherance of justice."""" (*Romero, supra*, 13 Cal.4th at p. 530.) Section 17, subdivision (b)(1) provides that a "wobbler" offense is a misdemeanor if the trial court, in its discretion, does not sentence the defendant to prison. We review a trial court's ruling under *Romero* and section 17, subdivision (b) for abuse of discretion. (*People v. Williams* (1998) 17 Cal.4th 148, 162 (*Williams*); *People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 978 (*Alvarez*); *Romero,* at p. 530.)

"In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, '"[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be

set aside on review."' [Citation.] Second, a '"decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'"' [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.)

C. Proceedings Below

Defense counsel filed a sentencing memorandum requesting the trial court to strike defendant's prior conviction under *Romero* or to reduce her charge to a misdemeanor. Counsel argued that defendant should be committed to a one-year residential drug treatment program. Counsel asserted that defendant was arrested for a minor and nonviolent offense, both Officers George and Gamboa stated that defendant was cooperative, defendant's prior felony conviction occurred more than 20 years earlier, and her demeanor at trial was exemplary.

The trial court acknowledged it had read the defense sentencing memorandum. The trial court stated, "On the *Romero* motion, she did not remain crime-free since the time she committed that strike felony, as she committed another felony. The *Romero* motion is respectfully denied. She is not a suitable candidate for rehabilitation. In this particular case this court will indicate that the three strikes law or the strikes law is intended for people who recidivate and the defendant has recidivated. Insofar as the 17(b) motion, that's respectfully denied. . . . I believe that, based upon the fact that Ms. Corona was on two probation cases at the time of the offense, to give her another probation case in misdemeanor-land would certainly be disingenuous, and those probation cases are 8BF05448, in front of Judge Sanchez, plead on January 24th 2011, where she was given 36 months' summary probation, and then case 8DY08315, where she was given 36 months' summary probation on January 26, 2011, which is two days later, by Judge Debra Cole-Hall. Based thereon the motion is denied."

The trial court then sentenced defendant to the high term of three years (doubled to six years because of the strike) based on the aggravating factor that she was on probation at the time she committed the current offense. The trial court noted as an additional aggravating factor that defendant absconded when she was before Judge Kim at the start of trial. Her bail was forfeited, and she was brought back to court in custody.

D. No Abuse of Discretion

Under *Romero*, the decision to strike a prior conviction in furtherance of justice must be "informed by generally applicable sentencing principles" relating to matters such as the nature and circumstances of the defendant's current and prior felonies as well as the defendant's "background, character, and prospects," which are intrinsic to the three strikes sentencing scheme. (*Williams*, *supra*, 17 Cal.4th at pp. 160, 161.) Similarly, under section 17, subdivision (b), some of the relevant factors the trial court should consider are "'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, [] his traits of character as evidenced by his behavior and demeanor at the trial' [citations]," "the general objectives of sentencing such as those set forth in California Rules of Court, rule [4.]410," and "the offense, the offender, and the public interest." (*Alvarez*, *supra*, 14 Cal.4th at p. 978.)

The probation report shows that defendant's adult criminal history began in 1981when she was arrested for prostitution as a misdemeanor. She was sentenced to 11 days in jail. Defendant was arrested for prostitution and sentenced to fines or fees every year thereafter through 1989, often multiple times. During those years, she was also sentenced on misdemeanor counts of petty theft, burglary, being under the influence of a controlled substance (four times), possession of a controlled substance, false identification to a police officer, and committing a public nuisance. In 1990, in addition to acquiring her strike conviction for robbery and receiving a two-year prison sentence, she was sentenced on charges of being under the influence three times. In 1993, she was sentenced for being under the influence of a controlled substance. In 1994, she was sentenced to 90 days in jail for possession of a controlled substance as a felony. In 2001,

she was sentenced to five years' probation for petty theft with a prior as a felony. Her probation was revoked in January 2006, and she received three years in prison. In 2008, she was charged with driving with a suspended license and sentenced to 24 months' probation and 10 days in jail. In 2008, she was again convicted of driving with a suspended license.

The nature and circumstances of the defendant's current and prior felonies reflect a person who is continually reoffending. Although most of defendant's convictions are for misdemeanors, she also has had three felony convictions, and these have occurred later in her criminal career. Therefore, defendant's crimes have increased in seriousness. The probation report expressed concerns regarding defendant's activities in the community, and the probation officer was opposed to a grant of probation. Defendant's background, character and prospects are reflected in the long list of her offenses and in the fact that she absconded while on bail as trial began in the instant case. The trial court clearly took into consideration defendant's current conduct in addition to her criminal history. The trial court specifically stated it had considered the defense sentencing memorandum, which along with the attached *Romero* and section 17, subdivision (b) motions, listed circumstances in mitigation. The trial court is presumed to have considered all pertinent factors in the absence of an affirmative showing to the contrary. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Both *Romero* and *Alvarez* stated that among the most important considerations are not only the constitutional rights of the defendant, but also the interests of society. (*Romero, supra,* 13 Cal.4th at p. 530; see also *Alvarez, supra,* 14 Cal.4th at p. 978.) Striking a serious felony is an extraordinary exercise of discretion and is reserved for "extraordinary" circumstances. (*People v. Philpot* (2004) 122 Cal.App.4th 893, 905.) The same holds true for reducing a felony to a misdemeanor. Defendant's inability to stop reoffending and her lack of respect for the justice system lead to the conclusion that her case was not so extraordinary that she merited being treated as if she had not been

previously convicted of a serious felony (*Williams*, *supra*, 17 Cal.4th at p. 161), or that she deserved to have her current offense reduced to a misdemeanor.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.