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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHASE MICHAEL HANSON,

Defendant and Appellant.

2d Crim. No. B284925
(Super. Ct. No. 16F-05123)
(San Luis Obispo County)

Chase Michael Hanson appeals a judgment following his conviction for conspiracy to possess and transport cocaine for sale and to maintain a place to sell or use a controlled substance (Pen. Code, § 182, subd. (a)(1); Health and Saf. Code, §§ 11351, 11352, 11366)¹ (count 1); selling, transporting or offering to sell a controlled substance--cocaine (§ 11352, subd. (a)) (count 2); possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)) (count 4); possession of an assault weapon (*id.*, § 30605,

¹ All further statutory references are to the Health and Safety Code unless otherwise stated.

subd. (a)) (count 5); possession for sale of a controlled substance--MDMA ("Ecstasy") (§ 11378) (count 7); possession of an assault weapon (Pen. Code, § 30605, subd. (a)) (count 8); large-capacity magazine activity (*id.*, § 32310) (counts 9 and 10); and unlawful possession of ammunition (*id.*, § 30305, subd. (a)(1)) (count 11).

The jury found true a finding on the special allegation on counts 1 and 7 that Hanson had a prior 2012 conviction for possession of cocaine for sale, a felony. (§ 11351.) The trial court imposed consecutive three-year enhancements on those counts for that 2012 conviction as required by section 11370.2. But the passage of Senate Bill No. 180 abolished those enhancements (Stats. 2017, ch. 677, § 1), and this change in the law is retroactive.

We strike those three-year enhancements. As so modified, the judgment is affirmed.

FACTS

Suffice it to say a jury found Hanson guilty of conspiracy to possess and transport cocaine for sale (count 1); selling and transporting cocaine (count 2); possession of MDMA (count 7); possession of 1) a firearm by a felon, 2) assault weapons, 3) large capacity magazines and 4) ammunition (counts 4, 5, 8, 9, 10 and 11). The jury found true the special allegations that on count 1 the cocaine exceeded four kilograms by weight and on count 2 it exceeded one kilogram. (§ 11370.4, subd. (a).)

On counts 1 and 7, the People alleged Hanson had been convicted of possession of cocaine for sale in 2012, a felony. (§ 11351.) Based on a stipulation by Hanson and the People, the jury found this special allegation to be true for both counts. (§ 11370.2, subd. (a).)

The trial court imposed an aggregate prison term of 18 years 8 months. On count 1 (Pen. Code, § 182, subd. (a)(1)), it sentenced Hanson to five years and a consecutive five years for the section 11370.4, subdivision (a) enhancement. On count 2, the court stayed the “punishment” and the “enhancement” pursuant to Penal Code section 654. On counts 4, 5, 7, 8, 9, 10 and 11, it sentenced him to two years, and he received eight months on each of those two-year sentences to be served consecutively. On the Penal Code section 667.5, subdivision (b) enhancement, it ordered him to serve a one-year consecutive sentence.

On count 1 (conspiracy to violate section 11351), the trial court ordered Hanson to “serve an additional 3 years consecutive to the term in count 1” because of his 2012 conviction “for a violation of section 11351.” On count 7 (violation of section 11378), the court also imposed the same enhancement, stayed.

At the time of sentencing, section 11370.2 provided, in relevant part, “Any person convicted of a violation of, or of a conspiracy to violate, Section 11351” (former § 11370.2, subd. (a)) or “a violation of . . . Section 11378” (*id.*, subd. (c)) shall “receive, in addition to any other punishment authorized by law, . . . a full, separate, and consecutive three-year term for each prior felony conviction of . . . Section 11351” (*Id.*, subds. (a) & (c).)

DISCUSSION

The Three-Year Consecutive Sentence Enhancements

The trial court complied with the requirements of former section 11370.2 in effect at the time of sentencing. Because Hanson had a prior 2012 felony drug conviction for violating section 11351, the court imposed consecutive three-year

enhancements as then required by section 11370.2 on counts 1 and 7. It stayed this enhancement on count 7.

But as Hanson and the People correctly note, the subsequent passage of Senate Bill No. 180 amended former section 11370.2 and abolished the consecutive three-year enhancements for Hanson's 2012 conviction. (Stats. 2017, ch. 677, § 1; *People v. Millan* (2018) 20 Cal.App.5th 450, 454.) Trial courts no longer have the authority to impose such enhancements. (§ 11370.2.) The new statute removed section 11351 convictions "from the list of prior convictions that qualify a defendant for the imposition of an enhancement" under the statute applicable at the time of Hanson's sentencing. (*Millan*, at p. 454.) Hanson was sentenced in 2017. This change in the law took place on January 1, 2018. (*People v. Camba* (1996) 50 Cal.App.4th 857, 865-866.)

We, Hanson and the People agree that this new statute applies retroactively.

"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." (*In re Estrada* (1965) 63 Cal.2d 740, 745.) The new statute applies retroactively to benefit Hanson. "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." (*Ibid.*; see also *People v. Rossi* (1976) 18 Cal.3d 295, 301; *People v. Millan*, *supra*, 20 Cal.App.5th at pp. 455-456 [the change to this statute is retroactive].)

DISPOSITION

The consecutive three-year enhancements the trial court imposed on counts 1 and 7 for Hanson's prior 2012 conviction under former section 11370.2 are stricken. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Hugh H. Mullin III, Judge*

Superior Court County of San Luis Obispo

Arielle Bases, under appointment by the Court of Appeal, for Defendant and Appellant.

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*Retired Judge of the Santa Clara County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)