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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.

MEGAN L. CLARK,

Defendant and Appellant.

B279211

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

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

Heather J. Manolakas, 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, Victoria B. Wilson and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

By means of a plea agreement, Megan Clark pleaded nolo contendere to possession of a controlled substance for sale (Health & Saf. Code,¹ § 11378) and admitted three prior convictions of the same offense within the meaning of section 11370.2. She 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 sealed portions of the search warrant and denied her motion to quash and traverse the warrant. In supplemental briefing, she argues that the sentence enhancements imposed for her prior convictions under section 11370.2 must be stricken. We strike the section 11370.2 sentence enhancements and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Clark was charged with two counts of possession for sale of a controlled substance (§ 11378); possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)); possession of ammunition by a person prohibited from possessing a firearm (Pen. Code, § 30305, subd. (a)(1)); and carrying a concealed firearm in a vehicle (Pen. Code, § 25400, subd. (a)(1)). It was alleged that she had suffered four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b) and that she previously had been convicted four times of violating section 11378 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.

Clark's co-defendant unsuccessfully moved to unseal, quash, and traverse the search warrant. Clark later filed a joinder in the previously denied motion to preserve her rights; the court denied her motion.

Clark entered a negotiated plea in which she 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. Clark was sentenced to the upper term of three years for the substantive offense, with nine additional years pursuant to section 11370.2 for the prior convictions, for a total sentence of 12 years in county jail. Clark later obtained a certificate of probable cause and appealed.

DISCUSSION

I. 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 Clark’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 Clark would have prevailed on any aspect of her 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 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 Clark's motion to unseal, quash, and traverse the warrant.

II. Section 11370.2 Enhancements

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

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.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.