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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.

YOLANDA C. GARCIA,

Defendant and Appellant.

B272454

(Los Angeles County
Super. Ct. No. YA091570)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Steven R. Van Sicklen, Judge. Affirmed in part and remanded with
directions in part.

Leonard J. Klaif, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A.
Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Susan Sullivan Pithey and Heather B. Arambarri, Deputy
Attorneys General, for Plaintiff and Respondent.

Yolanda C. Garcia (defendant) appeals following her guilty plea to one count of possession for sale of a controlled substance, methamphetamine (Health & Saf. Code, § 11378),¹ one count of transportation of a controlled substance, methamphetamine (§ 11379, subd. (a)), and various prior conviction allegations. The trial court sentenced defendant to the high term of four years for the count 2 transportation conviction, plus three 3-year enhancement terms pursuant to section 11370.2, subdivision (c) and one 1-year enhancement term pursuant to Penal Code section 667.5, subdivision (b). The court also sentenced defendant to a concurrent term of three years for the count 1 possession conviction. The court imposed various fines and fees and awarded 65 days of presentence custody credit.

Defendant contends that the count 1 sentence must be stayed pursuant to Penal Code section 654. She also contends that her presentence custody credits must be corrected to 86 days. Respondent agrees with both contentions. We agree as well. On our own motion, we asked the parties to brief the issue of whether the trial court erred in staying six of the Penal Code section 667.5 enhancements. The parties agree the trial court was required to impose or strike those enhancements. We agree as well. We remand this matter to the trial court, as set forth in more detail in our disposition. The judgment of conviction is affirmed in all other respects.

BACKGROUND

On September 24, 2014, Los Angeles County Sheriff's Deputy Robert Maas and his partner Deputy Sanchez stopped defendant's vehicle for failing to stop at a stop sign. When the deputies approached the vehicle, they observed a bag containing a crystalline substance resembling methamphetamine on the front seat of the vehicle. The deputies searched

¹ Further undesignated references are to the Health and Safety Code.

the vehicle and found a much larger amount of a crystalline substance resembling methamphetamine in the dashboard area. For purposes of the preliminary hearing, defendant stipulated that the two substances had been tested and found to contain methamphetamine; one piece weighed .1578 grams and the other 13.9583 grams. Deputy Mass opined that defendant possessed the methamphetamine for sale. He based his opinion on the amount of the drug, the lack of any paraphernalia to consume the drug and the fact that defendant did not appear to be under the influence of a controlled substance.

DISCUSSION

I. Penal Code Section 654

Both of defendant's convictions for possession for sale of a controlled substance and transportation of a controlled substance were based on the presence of methamphetamine in her vehicle at the time of the traffic stop. The trial court ordered the sentences on the two convictions to run concurrently, but did not make an express finding that defendant had separate objectives for the two offenses. Defendant contends there is no evidence to show that she had separate objectives. Respondent agrees. We agree as well.

Penal Code section 654 generally prohibits multiple punishment for a single physical act that violates different provisions of the law. (*People v. Jones* (2012) 54 Cal.4th 350, 358.) It also prohibits multiple punishment for an indivisible course of conduct that violates more than one provision of law. (*People v. Correa* (2012) 54 Cal.4th 331, 336.)

“Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. . . .’ [Citation.]” (*People v. Britt* (2004) 32

Cal.4th 944, 951-952.) “[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.]” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

The issue of whether a defendant harbored a single or multiple objectives during a course of criminal conduct is a factual question for the trial court. (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) A trial court need not explicitly state that it is considering and rejecting the applicability of Penal Code section 654 when it imposes sentence; the court’s findings may be implied. (*Coleman*, at p. 162.) We review any findings by the trial court for substantial evidence, and presume in support of the court’s conclusion the existence of every fact the court could reasonably have deduced from the evidence. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Courts have consistently found that when a person in a vehicle is found to possess a large quantity of a controlled substance, the offenses of possessing a controlled substance for sale and transporting a controlled substance are not separately punishable. (*People v. Tinker* (2013) 212 Cal.App.4th 1502, 1506; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583; *People v. Thomas* (1991) 231 Cal.App.3d 299, 306-307.) Here, there is nothing in the record to support an inference that defendant had separate objectives in possessing the controlled substance for sale and transporting it. Accordingly, sentence on the count 1 conviction must be stayed pursuant to Penal Code section 654.

II. Custody credits

The trial court awarded defendant 33 days of actual presentence custody plus 32 days of presentence conduct credit. Defendant contends she

was in custody for 43 days in this case, and is entitled to 42 days of conduct credit. Respondent agrees. We agree as well.

Defendant was arrested on September 24, 2014, and the parties agree she was released on bail on September 30, 2014, for a total of seven days in custody. On May 19, 2015, defendant was remanded. On May 26, 2015, she was released on her own recognizance, for a total of eight days in custody. On February 26, 2016, defendant was taken back into custody, where she remained until her sentencing on March 24, 2016, for a total of 28 days in custody. These periods add up to a total of 43 days in presentence custody.

As defendant acknowledges, she was in custody from February 26, 2016, to March 24, 2016, on both this case and case No. YA092417. Because she was sentenced simultaneously and concurrently on this case and case No. YA092417, she is entitled to presentence credit on both cases. (*People v. Kunath* (2012) 203 Cal.App.4th 906, 911-912.) She is entitled to 43 actual custody days. She is also entitled to an additional 42 days of custody credit. (Pen. Code, § 4019, subd. (f) [two days of conduct credit awarded for every two days of actual custody].)

III Penal Code Section 667.5 Enhancements

Defendant admitted that she had seven prior convictions for which she had served a prison term within the meaning of Penal Code section 667.5, subdivision (b). At the March 24, 2016 sentencing hearing, the court imposed a one-year enhancement term pursuant to Penal Code section 667.5 for defendant's prior conviction for assault with a deadly weapon in case No. YA063579. The court stated that it was imposing and staying four 1-year priors for the convictions in case Nos. YA083210 and YA83019, YA050603 and YA066826 "pending successful completion of the 14 years that was actually imposed." The minute order for the sentencing hearing states that the court

“imposes and stays an additional 3 years pursuant to section 667.5(b) Penal Code. (YA033072/YA038468, YA063579/YA066826, YA083210/YA083019).” The abstract of judgment shows one imposed Penal Code section 667.5 enhancement and three stayed Penal Code section 667.5 enhancements.

We asked the parties to brief the issue of whether all Penal Code section 667.5 enhancements should be stricken, with the exception of the enhancement based on the conviction in case No. YA063579, imposed consecutively as part of defendant’s sentence. On April 21 and 24, 2017, the parties filed letter briefs in which they agreed that Penal Code section 667.5 enhancements cannot be stayed.

It is the general rule that “[o]nce a prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken. [Citations.]” (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.) There are no applicable exceptions to that rule in this case.

The parties agreed that although defendant admitted she suffered seven prior felony convictions within the meaning of Penal Code section 667.5, she served a total of four prison terms for the convictions.² Where, as here, a defendant suffered two separate prior felony convictions but served a single prison term for both convictions, there can be only one enhancement pursuant to Penal Code section 667.5, and the second enhancement must be stricken. (*People v. Riel* (2000) 22 Cal.4th 1153, 1203.) Thus, the appropriate disposition for the duplicate Penal Code section 667.5 enhancement terms was striking them, not staying them. Accordingly, this matter must be

² It appears that she served a single prison term for her convictions in case Nos. YA033072 and YA038468; a single prison term for her convictions in case Nos. YA063579 and YA066826; and a single prison term for her convictions in case Nos. YA083210 and YA083019.

remanded to the trial court with directions to strike these enhancements. (See *People v. Jones* (1993) 5 Cal.4th 1142, 1153 [remanding with directions to strike].)

Striking the duplicate Penal Code section 667.5 enhancements would still leave four valid section 667.5 enhancements. The trial court used one of the convictions, the assault with a deadly weapon conviction in case No. YA063579, to impose a consecutive one-year enhancement term pursuant to Penal Code section 667.5. The remainder of the convictions were for violating section 11377, 11378 or 11379. The trial court used three of defendant's drug-related convictions to impose consecutive three-year enhancement terms pursuant to section 11370.2. This use does not require staying the Penal Code section 667.5 enhancement terms for those three convictions. A single prior conviction for a drug-related offense may serve as the basis of an enhancement under both section 11370.2 and Penal Code section 667.5. (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936; see also *People v. Powell* (1991) 230 Cal.App.3d 438, 441-442.)³

Respondent and defendant both contend that this matter should be remanded for the trial court to strike or impose the remaining valid enhancements. We agree. (See *People v. Bonnetta* (2009) 46 Cal.4th 143, 150-152 [remanding to permit trial court to exercise its discretion to strike or impose in compliance with section 1385].)

³ Section 11370.2, subdivision (c), provides that any person who is convicted of a violation of section 11378 or 11379 "shall receive, in addition to any other punishment authorized by law, including section 667.5 of the Penal Code, a full separate and consecutive three-year term for each prior felony conviction of" section 11378 or section 11379.

DISPOSITION

The trial court is directed to stay sentence on count 1 pursuant to Penal Code section 654 and to correct defendant's total presentence custody credits to 84 days. The trial court is further directed to strike one of the two Penal Code section 667.5 enhancements in each instance where defendant admitted two section 667.5 enhancements but served only a single prison term for the two underlying convictions. The trial court is also instructed to exercise its discretion to impose or strike the remaining Penal Code section 667.5 enhancements in compliance with Penal Code section 1385. The judgment of conviction is affirmed in all other respects.

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GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

HOFFSTADT, J.

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