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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.

MICHAEL ROSE,

Defendant and Appellant.

B280904

(Los Angeles County
Super. Ct. No. LA082618)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard H. Kirschner, Judge. Affirmed as modified.

Ann-Marissa Cook, 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, Assistant Attorney General, Victoria B. Wilson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Michael Rose pled no contest to one count of possession for sale of a controlled substance (fentanyl), in violation of Health and Safety Code section 11351.¹ He admitted an allegation under section 11370.2, subdivision (a), that he had suffered a prior conviction for violating section 11351. He was sentenced to county jail for a total of six years (the midterm of three years for the substantive offense, plus three years for the prior conviction enhancement).

Appellant timely appealed from the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5. His attorney originally filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, and appellant filed a supplemental brief. At appellant's request, we struck those briefs and granted appellant permission to file a new supplemental brief, in which he contends that his sentence enhancement must be stricken under recently amended section 11370.2. The People agree and so do we. Accordingly, the judgment is modified to strike the three-year sentence enhancement imposed under former section 11370.2, subdivision (a).

FACTS

On January 9, 2016 at about 11:40 p.m., Los Angeles Police Department Officer Kenny Pintado and his partner were on patrol in an area known for narcotics sales, prostitution and stolen vehicles, when they spotted a car with paper plates exiting a motel. They pulled the car over. A woman was driving the car and appellant was a passenger.

After the driver produced her driver's license, registration and insurance as requested, Officer Pintado asked appellant for

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

identification. Appellant provided his name and then began looking through a stack of papers. Appellant “appeared real nervous and stumbling through the papers, just going through them and stating that he couldn’t find it.” Officer Pintado could see an identification card in the stack of papers and asked appellant to hand over the papers, which appellant did. Officer Pintado saw that the California identification card contained a photograph and information that did not match appellant. Officer Pintado saw other identification cards in the stack of papers.

Officer Pintado and his partner ordered appellant out of the car. During a search of appellant, Officer Pintado’s partner found another false identification card on appellant, as well as several narcotics.

DISCUSSION

Prior to Senate Bill 180, section 11370.2, subdivisions (a) through (c) mandated three-year sentence enhancements for convictions for prior drug crimes. The qualifying convictions, listed in section 11370.2, consisted of 11 different drug offenses and conspiracy to commit them. Senate Bill 180 abolished 10 of the 11 qualifying prior convictions. The only remaining qualifying conviction is the use of a minor as an agent in the commission of a drug offense (§ 11380, subd. (a)). (Stats. 2017, ch. 677, § 1.) Senate Bill 180 became effective January 1, 2018. Thus, section 11370.2 now provides a sentencing enhancement only if the defendant has a prior conviction under section 11380.

Generally, amendments to the Penal Code do not apply retroactively. (See Pen. Code, § 3.) But courts recognize an exception for amendments that reduce the punishment for a specific crime. (See *People v. Brown* (2012) 54 Cal.4th 314, 323–

324.) Courts presume the Legislature intended those amendments to apply retroactively to all nonfinal judgments. (*Id.* at p. 323; *In re Estrada* (1965) 63 Cal.2d 740.) Courts also presume the Legislature intended amendments that abolish a crime or enhancement to apply retroactively to all nonfinal judgments. (See, e.g., *People v. Rossi* (1976) 18 Cal.3d 295, 301.) A judgment is final for retroactivity purposes when all direct appeals have been exhausted and a petition for a writ of certiorari in the United States Supreme Court has been denied or the time to file such a petition has passed. (*People v. Vieira* (2005) 35 Cal.4th 264, 305–306.)

Because appellant’s appeal was still pending at the time amended section 11370.2 became effective, we conclude that the amended statute applies to appellant’s case. Appellant received a section 11370.2 three-year enhancement based on a prior conviction for violating section 11351, but a section 11351 conviction no longer qualifies for a section 11370.2 enhancement. Appellant asks us to remand the case for resentencing. The People contend, and we agree, that we may simply strike the enhancement, given that the amendment to section 11370.2 is now in effect.

DISPOSITION

The judgment is modified to strike appellant's three-year sentence enhancement under section 11370.2, subdivision (a). In all other respects, the judgment is affirmed. The trial court shall forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT