

Filed 12/17/18 P. v. Barraza CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE BARRAZA,

Defendant and Appellant.

B285685

(Los Angeles County
Super. Ct. No. PA088524)

APPEAL from a judgment of the Superior Court of Los Angeles County, David W. Stuart, Judge. Affirmed as modified.

Kieran D. C. Manjarrez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The District Attorney charged defendant and appellant Jose Barraza (defendant) with one count of sale/offer to sell/transportation of a controlled substance, specifically methamphetamine, in violation of Health and Safety Code section 11379(a). The information further alleged defendant had suffered one prior felony conviction within the meaning of Penal Code sections 667(b)-(j) and 1170.12 (the Three Strikes law). The charges were predicated on evidence defendant was involved in the sale of crystal methamphetamine to an undercover Los Angeles Police Department officer. Specifically, the officer asked defendant and a co-defendant where she could buy crystal methamphetamine, the co-defendant said he had some on his person, defendant asked for and obtained the money, and the co-defendant provided the officer with the methamphetamine.

A trial jury found defendant guilty of the charged controlled substance offense. Defendant admitted sustaining the prior alleged “strike” conviction and the trial court sentenced defendant to the mid-term of three years in state prison, doubled to six years pursuant to the Three Strikes law. The court awarded defendant 166 days of actual presentence credit and 166 days of conduct credit. The court also imposed a \$50 criminal laboratory fee pursuant to Health and Safety Code section 11372.5(a), a \$50 penalty assessment pursuant to Penal Code section 1464, and a \$35 penalty assessment pursuant to Government Code section 76000.

We appointed counsel to represent defendant on appeal. After examining the record, counsel filed an opening brief raising no issues. On August 22, 2018, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the appellate record, and we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and—with two minor exceptions—no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24; *People v. Wende* (1979) 25 Cal.3d 436, 441.) First, defendant should have been awarded 163 days of custody credit and 162 days of conduct credit; he was arrested on April 4, 2017, and sentenced on September 13, 2017. (Pen. Code, § 4019(f); *People v. Whitaker* (2015) 238 Cal.App.4th 1354, 1358.) Second, when the trial court imposed the \$50 crime laboratory fee pursuant to Health and Safety Code section 11372.5(a), it was also required to impose certain mandatory penalty assessments and surcharges on that fee. (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1528-30; see also *People v. Ruiz* (2018) 4 Cal.5th 1100 [criminal laboratory analysis fee is punitive].) Based on the \$50 drug laboratory fee, a total of \$155 in mandatory penalties and surcharges should have been imposed. While the abstract of judgment includes two required penalty assessments totaling \$85, it does not include five other mandatory assessments, surcharges, and penalties: a \$10 emergency medical services penalty assessment pursuant to Government Code section 76000.5(a)(1); a \$10 state surcharge pursuant to Penal Code section 1465.7(a); a \$25 state court construction penalty pursuant to Government Code section 70372(a)(1); a \$5 Proposition 69 DNA identification penalty pursuant to Government Code section 76104.6(a)(1); and a \$20 state-only DNA Identification Fund penalty pursuant to Government Code section 76104.7(a).

DISPOSITION

The judgment is modified to award defendant 325 days of pre-sentence credit (163 days of custody credit and 162 days of conduct credit) and to impose the aforementioned penalties and surcharges in connection with the \$50 drug laboratory fee. The clerk of the superior court shall prepare an amended abstract of judgment that reflects these modifications and deliver the amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

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