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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN CANDLER,

Defendant and Appellant.

B241785

(Los Angeles County
Super. Ct. No. BA388788)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jose I. Sandoval, Judge. Reversed and remanded.

Libby A. Ryan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Brendan Sullivan, Deputy Attorney General, for Plaintiff and Respondent.

SUMMARY

Defendant Steven Candler appeals from a judgment entered after a jury convicted him in count 1 of possession of cocaine base (Health & Saf. Code, § 11351.5) and in count 2 of transportation of a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd. (a)). He contends that his sentence to a concurrent 16-month term of imprisonment on count 1 violates the prohibition against multiple punishments in Penal Code section 654 and that his admission of his prior convictions was inadequate because the advisements were incomplete. We agree with his contentions.

PROCEDURAL BACKGROUND

It is unnecessary to recite separately the facts of appellant's trial in order to resolve his contentions on appeal.

Appellant was convicted by a jury of one count of possession of cocaine base and one count of transportation of a controlled substance. At sentencing, appellant admitted one prior serious or violent felony conviction within the meaning of Penal Code sections 667, subdivisions (b)-(i), and 1170.12, subdivisions (a)-(d), and four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). The trial court struck the prior "strike" and sentenced appellant to five years in state prison based on the midterm of four years on count 2 plus one year for one prior prison term and a concurrent low term of 16 months on count 1. The court stayed the three 1-year enhancements for the remaining three prior prison terms.

LEGAL DISCUSSION

I. Penal Code Section 654¹

Candler contends, and the Attorney General's office concedes, that Candler's sentence on count 1 for possession of cocaine should be stayed pursuant to section 654. We agree.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Section 654 provides in pertinent part: “(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654, subd. (a).) The purpose of section 654 is to ensure that punishment is commensurate with a defendant's culpability. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 705.) Courts have construed section 654 broadly, restricting punishment for multiple offenses committed with a single objective. In *Neal v. State of California* (1960) 55 Cal.2d 11, 19, the Supreme Court held where a course of conduct violates more than one statute but is part of an indivisible transaction with a single intent or objective, section 654 applies, and the trial court may impose only one sentence. But where a defendant entertains multiple criminal objectives that are “independent and not incidental to each other,” the court may impose separate punishment even where the violations were otherwise part of an indivisible course of conduct. (*People v. Sok* (2010) 181 Cal.App.4th 88, 99.) “It is the defendant's intent and objective that determines whether the course of conduct is indivisible. . . . “[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.”” (*People v. Le* (2006) 136 Cal.App.4th 925, 931, citation omitted; see also, *People v. Alford* (2010) 180 Cal.App.4th 1463, 1466.)

Here, Candler testified that he placed a bundle of cocaine base in his buttocks at his mother's house before leaving for a fast food restaurant. Police officers observed Candler park his car at the fast food restaurant. The officers then observed one individual enter appellant's car and, after a short time, exit. Then a second individual entered his car, appellant drove a few blocks, and the individual exited the car, placing something in his mouth. Officers conducted a traffic stop of Candler and during a subsequent strip search at the police station, discovered the bundle of cocaine base. Candler testified that the cocaine was for personal use.

Candler was convicted of simple possession and transportation of cocaine base. The Attorney General's office concedes that Candler “acted pursuant to a single intent

and objective when he was in possession of cocaine and transported it from his mother's house" to the fast food restaurant and then a few blocks away. We agree that Candler's conduct was part of an indivisible transaction with a single intent or objective and that section 654 applies. Because section 654 applies, the proper procedure is to impose a concurrent term and then stay it. (See *People v. Hernandez* (2005) 134 Cal.App.4th 1232, 1238–1239.) Accordingly, the matter is remanded for resentencing and the trial court is directed to stay the concurrent 16 month sentence imposed on count 1 (possession of cocaine base).

II. Waiver On Prison Priors

Candler contends that his waiver of a trial and admission of his prior prison terms was inadequate because the advisements were incomplete and under the totality of the circumstances, his waiver was not voluntary and intelligent. We agree.

The Supreme Court has explained that "before accepting a criminal defendant's admission of a prior conviction, the trial court must advise the defendant and obtain waivers of (1) the right to a trial to determine the fact of the prior conviction, (2) the right to remain silent, and (3) the right to confront adverse witnesses. [Citation.] Proper advisement and waivers of these rights in the record establish a defendant's voluntary and intelligent admission of the prior conviction. [Citations.]" (*People v. Mosby* (2004) 33 Cal.4th 353, 356.)

Here, after the jury returned its verdict but before it was excused, the trial court in a sidebar asked defense counsel if Candler would be willing to waive jury trial on the priors and submit to a court trial. Defense counsel responded, "Right. And I don't think a court trial will be necessary. I just would like another day so I can review it with him, and we'll do the admissions. But, yeah, we can waive jury on that." The trial court then addressed Candler:

THE COURT: [¶] . . . [¶] Mr. Candler, the People have alleged certain prior convictions, and you have a right to have a jury trial on those convictions. My understanding is that you're willing to waive your right to that kind of a jury trial and submit to a court trial on those priors; is that correct?

THE DEFENDANT: Yes.

At the sentencing hearing over three weeks later, the trial court asked:

THE COURT: . . . Do we have the priors? Are we going forward on the priors?

[PROSECUTOR]: I was told he would admit his priors.

[DEFENSE COUNSEL]: That's correct. We need to do that.

THE COURT: Do you want to take that admission, [Prosecutor]?

[PROSECUTOR]: Yes, your Honor.

[DEFENSE COUNSEL]: May I just remind him of that?

THE COURT: Certainly.

(Defendant confers with his attorney sotto voce.)

[DEFENSE COUNSEL]: We're ready. Thank you.

THE COURT: With that, [Prosecutor], whenever you are ready.

[PROSECUTOR]: Is Steven Candler your true and correct name?

DEFENDANT CANDLER: Yes, ma'am.

[PROSECUTOR]: Is March 1st, 1974, your true and correct date of birth?

DEFENDANT CANDLER: Yes, ma'am.

[PROSECUTOR]: Sir, this is in regards to your prior convictions alleged in information case number BA388788. You were convicted at a jury trial, and you have the right to a jury trial to determine whether you have in fact been convicted of the priors alleged. Your attorney has advised us that you're willing to waive your right to a jury trial and admit the priors.

Is that true?

DEFENDANT CANDLER: Yes, ma'am.

[PROSECUTOR]: Do you understand your right to a jury trial on the priors?

DEFENDANT CANDLER: Yes, ma'am.

[PROSECUTOR]: And you give up that right?

DEFENDANT CANDLER: Yes, ma'am.

Candler then admitted to a strike and four prison priors.

In *Mosby*, right after the jury reached a verdict, the defendant was advised that he had a right to a jury trial on the prior conviction and he waived that right. (*Mosby*, *supra*, 33 Cal.4th at p. 358.) He was then advised that he had a right to have a court determine the truth of the prior felony conviction and waived that right. (*Ibid.*) The *Mosby* court held that the totality of the circumstances indicated a voluntary and intelligent waiver of all three rights based on three factors. First, the court noted that the defendant “had *just* undergone a jury trial at which he did not testify, although his codefendant did,” indicating that the defendant not only understood but had just exercised his right to remain silent at trial, thereby forcing the prosecution to prove he committed the charged offense. (*Id.* at p. 364.) Second, “because he had, through counsel, confronted witnesses at that immediately concluded trial, he would have understood that at a trial he had the right of confrontation.” (*Ibid.*) Finally, the court considered the defendant’s prior experience with the criminal justice system as evidence of a repeat offender’s knowledge and sophistication regarding his legal rights, noting that the *Mosby* defendant’s prior conviction was based on a plea of guilty at which he would have received advisements of the three rights to be waived. (*Id.* at p. 365.)

Here, we conclude the facts here are sufficiently different from those in *Mosby* that we cannot say with any assurance that Candler truly knew of and voluntarily waived his rights to trial, to remain silent, and to confront witnesses as to his prior convictions. Unlike *Mosby* where the trial court expressly advised the defendant of his right to a court trial after obtaining his waiver of a jury trial, the prosecutor here simply confirmed at the sentencing hearing that Candler had waived his right to a jury trial. Moreover, unlike *Mosby* where the defendant had exercised his right to silence at the prior trial (while a codefendant had testified), Candler testified at his trial so it is not as clear as in *Mosby*

that he would infer the existence of his right to silence as to the prior convictions. Finally, unlike the situation in *Mosby* where the incomplete advisement and admission occurred immediately after the jury verdict, here Candler's admission was not taken until over three weeks later. On the other hand, Candler had four prior convictions and, while there was nothing to indicate they were the product of guilty pleas where he would have necessarily been advised of the same three rights, his record as a repeat offender does suggest a level of knowledge and sophistication regarding his legal rights.

Nonetheless, based on the totality of the circumstances we cannot conclude with assurance that Candler knowingly and voluntarily waived his rights. The remedy for this error is reversal as to the prior conviction enhancements and remand for a new trial on that issue only. (*People v. Moore* (1992) 8 Cal.App.4th 411, 422.)

DISPOSITION

The judgment is reversed as to the prior conviction allegations and is remanded for a new trial of these allegations and resentencing. At resentencing, the trial court is directed to stay the concurrent 16 month prison term imposed on count 1. In all other respects, the judgment is affirmed.

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CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.