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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AMANDA R. MENDOZA,

Defendant and Appellant.

A135612

(Mendocino County  
Super. Ct. No. CR 10-15484)

Amanda R. Mendoza appeals from a judgment entered on her plea of no contest to transportation of a controlled substance (Health & Saf. Code, § 11378), and admissions of allegations that she was armed (Pen. Code, § 12022, subd. (d)) and served a prior prison term (*id.*, § 667.5, subd. (b)). Her court-appointed counsel has filed a brief raising no issues and requesting this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. As the appeal is based solely on grounds occurring after entry of the plea and does not challenge the validity of the plea, it is authorized. (Cal. Rules of Court, rule 8.304(b)(4).)

**FACTS AND PROCEEDINGS BELOW**

The facts, which we take from the probation report filed on April 4, 2012, are essentially as follows: On November 14, 2010, at about 9:11 p.m., Ukiah Police Officer Morse stopped a vehicle driven by appellant because it had a non-operational brake light. The officer asked the front passenger, who identified himself as “Jose Valencia,” to step outside the vehicle. When asked whether he possessed any weapons, the man answered “yes, I have a gun.” Officer Morse then detained him in his patrol care and placed

appellant in another police vehicle that arrived at the scene. “Jose Valencia” was later determined to be Manuel DeLeon, for whom an active felony arrest warrant had issued.

A search of the car appellant was driving disclosed a second handgun, a box of .40 caliber ammunition, a baggie containing suspected methamphetamine, and another containing marijuana. Two more baggies containing what appeared to be methamphetamine were also found in a compartment at the front seat. Three of these bags were later tested by the state Department of Justice and found to contain methamphetamine individually weighing 23.95 grams, 27.96 grams, and 27.86 grams. A woman’s handbag was found on the floor behind the driver’s seat; within the handbag were empty plastic bags, a scale, and a plastic grocery bag containing a white powder that tested negative for methamphetamine.

Appellant was determined to be under the influence of a stimulant and admitted she had used methamphetamine about two hours earlier. She was then arrested and transported to the Mendocino County jail. At the time of her arrest, appellant was the subject of criminal proceedings in Napa County. Prior to sentencing in the present case, appellant received a six-month jail sentence and probation in the Napa case.

On November 17, 2010, the Mendocino County District Attorney filed an information charging appellant with possession of a controlled substance for sale (Health & Saf. Code, § 11378—count one); transportation of a controlled substance (*id.*, § 11379, subd. (a)—count two); possession of a controlled substance (*id.*, § 11350, subd. (a)—count three); possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)—count seven);<sup>1</sup> and being under the influence of a controlled substance, a misdemeanor (Health & Saf. Code, § 11550, subd. (a)—count eight). As to counts one and two, the information alleged that appellant was armed with a firearm within the meaning of Penal Code section 12022, subdivision (c) and, as to count three, that a principal was armed with a firearm within the meaning of Penal Code section 12022, subdivision (a)(1). The information also alleged,

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<sup>1</sup> Counts four, five and six were alleged only against codefendant Manuel DeLeon. The first three counts were against both appellant and DeLeon.

as to appellant, one prior prison term within the meaning of Penal Code section 667.5, subdivision (b).

In a plea open to the court made on November 17, 2011, appellant pleaded no contest to count one, possession of a controlled substance for sale, a felony, in violation of Health and Safety Code section 11378. After the district attorney's motion to amend the information by adding an arming allegation (Pen. Code, § 12022, subd. (d)) was granted, appellant admitted the allegation. The allegation specified that although appellant was not personally armed with a firearm, she knew that another principal, DeLeon, was personally armed during commission of the offense. Appellant also admitted the allegation that she had served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b).

In exchange for the plea, the district attorney dismissed all of the remaining counts and special allegations.

Before she entered her plea and admission, appellant was advised by the court that in light of her having served a prior prison term, her plea would expose her to a maximum prison term of seven years. The court also advised appellant, and she also waived, her right to a preliminary hearing and to a trial by a jury of her peers, the right to confront and cross-examine the witnesses against her, to subpoena witnesses for her defense and to testify in her own defense, and her privilege against self-incrimination. Appellant stipulated to a factual basis for her plea, and the district attorney also described that factual basis. Defense counsel also stated that she had discussed the plea with appellant and concurred in the making of it. Additionally, the court advised appellant that conviction on her plea would constitute an enhancing prior conviction if she was convicted of another narcotics related violation in the future, confirmed that appellant had fully discussed with her attorney all possible defenses to the charge, did not enter her plea on the basis of any promises made to her other than matters discussed in court, and was not under medication or otherwise unable to understand the proceedings. Finally, the court advised appellant that if she was not a citizen, her plea "will cause your

deportation,” bar her from owning or possessing a firearm or ammunition, and require her to register as a narcotic offender in the city in which she resides.

At the April 4, 2012 sentencing hearing, the court denied probation and sentenced appellant to the aggravated term of three years for violation of Health and Safety Code section 11378, and consecutive terms of one year for each allegation pursuant to Penal Code sections 667.5, subdivision (b) and 12022, subdivision (d). The court ordered the prison term to be served locally, consistent with the so-called “realignment program” recently incorporated into the Determinate Sentence Act (Pen. Code, § 1170, subd. (h)). Appellant was granted 13 days actual custody credit.

The court imposed a \$800 restitution fine (Pen. Code, § 1202.4), a parole revocation fine (*id.*, § 1202.45), which the court suspended, a \$40 court security fee, a \$30 criminal conviction fee, and a \$190 laboratory fee (*id.*, § 1465.8; Gov. Code, § 70373; Health & Saf. Code, § 11372.5, subd. (a)). The court also imposed, but then ordered stricken, a \$570 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)).

On May 30, 2012, nearly two months after she was sentenced, appellant filed an “Informal Request for Court to Recall Sentence on its Own Motion” based on Penal Code section 1170, subdivision (d), which permits a trial court, within 120 days of the date of commitment on its own motion, “to recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced.” The reason for the motion, as explained herein, is that “[o]nce she began serving her sentence, it was learned that she would not be able to have any contact visits with her child due to the fact she is housed in county prison.” The motion was denied by the court, without explanation.

### **DISCUSSION**

Where, as here, an appellant has pled not guilty or no contest to an offense, the scope of reviewable issues is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896.)

Nothing in the record before us indicates appellant was mentally incompetent to stand trial or to understand the admonitions she received from the court prior to entering her plea, and to thereupon enter a knowing and voluntary plea.

The admonition given appellant at the time she entered her plea fully conformed, indeed exceeded, the requirements of *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122, and her waiver was knowing and voluntary.

The record contains a factual basis for the plea.

The sentence is authorized by law.

So far as we can tell, denial of appellant's motion to recall the sentence does not present a constitutional, jurisdictional, or other issue pertaining to the legality of the proceedings leading to the plea. Moreover, the text of subdivision (d) of Penal Code section 1170, the statute appellant relied upon, suggests that the purpose of the provision is to enable a trial court, when necessary, "to eliminate disparity of sentences and to promote uniformity in sentencing." The record provides no reason to think the sentence imposed in this case is disparate.

Our independent review having revealed no arguable issues that require further briefing, the judgment is affirmed.

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Kline, P.J.

We concur:

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Lambden, J.

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Richman, J.