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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY CARL BEEBE,

Defendant and Appellant.

A142987

(Lake County
Super. Ct. Nos. CR932759,
CR934994-A)

MEMORANDUM OPINION¹

Defendant was convicted in two separate proceedings of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), possession of methamphetamine (Health & Saf. Code,² 11377, subd. (a)), possession of methamphetamine for sale (§ 11378), possession of hydrocodone (§ 11350, subd. (a)), possession of morphine (§ 11350, subd. (a)), and misdemeanor possession of drug-smoking paraphernalia (former § 11364.1, subd. (a)(1)). A prior serious felony was found to be a strike. (Pen. Code, § 667.)³

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration section 8.1(1), (3).

² Further statutory references are to the Health and Safety Code unless otherwise indicated.

³ Because the underlying facts are not relevant to this appeal, we do not recite them.

At the pre-Proposition 47 sentencing hearing on September 2, 2014, the trial court imposed a sentence, fees, and fines.⁴ As relevant here, on the misdemeanor conviction for possession of drug-smoking paraphernalia, a violation at the time of sentencing of section 11364.1, subdivision (a)(1), the court imposed a \$50 laboratory analysis fee (§ 11372.5, subd. (a)), and \$155 of related penalty assessments.⁵

Defendant contends and the Attorney General concedes the trial court erred by imposing a laboratory analysis fee and related penalty assessments on the drug-smoking paraphernalia conviction.

Section 11372.5, subdivision (a) provides in relevant part that every person convicted of particular listed crimes shall pay a criminal laboratory analysis fee in the amount of \$50. Listed is section 11364, possession of drug paraphernalia, which was suspended from January 1, 2012 to January 1, 2015 (Stats. 2011, ch. 738, § 10). Section 11364.1, the temporarily renumbered version of the statute, was effective during the same three-year period. Defendant's offense was committed in 2014, during the three-year period when possession of drug paraphernalia was punished by section 11364.1. Section 11364.1 has since been repealed, effective January 1, 2015 (Stats. 2014, ch. 331, § 9), and section 11364 is again operative to prohibit the same offense. Section 11364.1, however, was not one of the listed laboratory analysis fee offenses in section 11372.5, subdivision (a) when defendant committed and was sentenced for possession of drug paraphernalia. Thus the imposition of the \$50 laboratory analysis fee and related penalty assessments of \$155 for defendant's conviction for violating section 11364.1 must be stricken.

⁴ After the notice of appeal was filed, and following the enactment of Proposition 47, on November 18, 2014, three of the drug possession offenses were reduced to misdemeanors per Penal Code section 1170.18.

⁵ Although the trial court did not break down and specify the individual components of the \$155 in penalty assessments, we assume the following assessments apply to the \$50 laboratory analysis fee: \$50 (Pen. Code, §1464, subd. (a)); \$10 (Pen. Code, 1465.7, subd. (a)); \$35 (Gov. Code, § 76000, subd. (a)); \$25 (Gov. Code, § 70372, subd. (a)); \$10 (Gov. Code, § 76000.5); \$5 (Gov. Code, § 76104.6, subd. (a)); and \$20 (Gov. Code, § 76104.7).

As to defendant's misdemeanor conviction for violating section 11364.1, the judgment is modified to vacate the \$50 laboratory analysis fee and the related \$155 of penalty assessments. The trial court shall forward a copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Dondero, J.

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