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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS ALLEN MEREDITH,

Defendant and Appellant.

B252730

(Los Angeles County
Super. Ct. No. VA113133)

APPEAL from an order of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Reversed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Thomas Allen Meredith was originally convicted of possession of ammunition by a felon, possession of methamphetamine for sale, as well as simple possession of methamphetamine, and was sentenced to state prison for four years. Two years ago we reversed the first two convictions, holding the trial court had failed to properly conduct a hearing on Meredith's motion to traverse the search warrant as required by the Supreme Court's decision in *Franks v. Delaware* (1978) 438 U.S. 154 [98 S.Ct. 2674, 57 L.Ed.2d 667] (*Franks*.) The motion had challenged the basis for probable cause set forth in the affidavit in support of the warrant provided by a Los Angeles County Sheriff's detective, which contained multiple inconsistencies as to facts allegedly within the personal knowledge of the detective. Although we affirmed Meredith's conviction for simple possession, which did not rely on the fruits of the challenged search, we ordered the trial court to conduct a *Franks* hearing to allow Meredith the opportunity to contest the statements made by the detective in support of the search warrant. (*People v. Meredith* (May 28, 2013, B234698) [nonpub. opn.]¹)

On remand, pursuant to the suggestion of a different trial judge and without notice to Meredith, the People dismissed the two convictions we had reversed. With respect to the remaining simple possession conviction, the court announced the state prison term of four years previously imposed at the original sentencing hearing to run concurrently with the now-reversed conviction for possession of ammunition by a felon would remain in full force and effect. Meredith contends the trial court violated his constitutional rights by failing to conduct a resentencing hearing and should have required the People to disclose the transcript of the original suppression hearing even though the charges to which it related had been dismissed. We reverse and remand for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Warrant and Meredith's Arrest

In November 2009 Detective Gilbert Arakawa sought and was issued a warrant to search Meredith's Whittier residence and a storage unit in La Habra based on information

¹ We rely on this unpublished opinion pursuant to California Rules of Court, rule 8.1115(b)(1). The facts are more completely described in that opinion.

indicating Meredith, a felon, was engaged in the sale of methamphetamine and was in illegal possession of a firearm. In support of the required showing of probable cause, Arakawa submitted an affidavit, based on his personal knowledge, stating he had been contacted by two informants who told Arakawa that Meredith was supplying street level drug dealers with methamphetamine and spoke frequently and passionately about his .45 caliber semiautomatic handgun. Arakawa also stated he had initiated surveillance of Meredith's residence and had seen him engage in suspicious conduct similar to that reported by the informants.

Sheriff's deputies executed the warrant immediately after it was issued. At the Whittier house where Meredith resided with his mother, deputies found approximately six and one-half grams of methamphetamine, a rifle and some ammunition, a small digital scale with white residue on the plate and \$2,738 in cash. In Meredith's truck deputies found two boxes of fold-over plastic sandwich bags, a piece of paper entitled "owe sheet," a pair of brass knuckles and a receipt for payment to a storage facility. In a motor home parked in front of the house, deputies found a small digital scale covered with white residue and marijuana. At a storage locker Meredith had been seen entering deputies found approximately two and one-half grams of methamphetamine, some documents bearing Meredith's name and two bulletproof vests they determined to be at least 10 years old. Meredith himself was searched after his arrest. He was carrying \$800 in cash but no methamphetamine.

Meredith was released on bail after his arrest. A week later Detective Arakawa and Deputy Ted Cariasco saw Meredith standing next to his truck and spoke to him. Arakawa saw Meredith throw something on the ground and told Meredith to put his hands on the patrol car. Arakawa searched Meredith and found a glass pipe and .87 grams of methamphetamine in a plastic bag in Meredith's pocket. Arakawa found on the ground a number of unused one and one-half by one and one-half inch plastic jeweler's bags commonly used to package drugs for sale.

2. *Pretrial and Trial Proceedings*

Meredith moved to quash the search warrant and to suppress the evidence seized pursuant to the warrant. (Pen. Code, § 1538.5, subd. (a)(1)(B).)² The trial court denied the motion, citing Detective Arakawa's statement he had observed Meredith in the motor home handling a bag that appeared to contain methamphetamine or cocaine. Meredith then moved to traverse the warrant,³ challenging Arakawa's claim he had seen Meredith handling drugs inside the motor home from a distance of 150 feet. In scheduling an evidentiary hearing on the motion to traverse, the trial court advised counsel the hearing would be conducted in camera. Meredith objected on the ground he was challenging Arakawa's statements, not those of the confidential informants. The court rejected the request to open the hearing and questioned Arakawa and his supervisor, Lieutenant James Tatreau, in camera. After the hearing the court denied the suppression motion, announcing there had been probable cause to issue the warrant and the affidavit did not contain material omissions or misstatements. The transcript of the hearing was sealed.

Lieutenant Tatreau, rather than Detective Arakawa, testified at trial regarding the surveillance conducted of Meredith. In several significant respects Tatreau's testimony contradicted that of Arakawa's contained in the search warrant affidavit. Arakawa also testified during the People's case but was asked no questions about the surveillance at that time. He testified solely about Meredith's second arrest while on bail, during which Meredith was found in possession of a small amount of methamphetamine, a glass pipe and a number of small plastic bags of the type used to package illicit drugs for sale.

Sergeant Don Manumaleuna testified as an expert witness on drug sales. Based on the amount of methamphetamine found, the cash, the rifle, the scales, the plastic bags and

² Statutory references are to this code unless otherwise indicated.

³ A motion to quash challenges the facial validity of the warrant. A motion to traverse attacks the underlying veracity of the statements made in the search warrant application (sometimes called a "subfacial" challenge). (*People v. Heslington* (2011) 195 Cal.App.4th 947, 958.)

the pay-owe sheet, Manumaleuna opined the methamphetamine found in the house and storage unit had been possessed for sale.

Meredith did not testify. The defense called Detective Arakawa to testify concerning the surveillance. His trial testimony, like his search warrant affidavit, was inconsistent with Lieutenant Tatreau's description of their joint surveillance. One of Meredith's friends testified Meredith was not at his Whittier home at the time Tatreau and Arakawa said they had observed Meredith engaging in suspicious behavior. A neighbor testified the motor home's curtains and sunscreen were always in place, which would have made it impossible for the officers to have observed what they said they saw. And Meredith's brother James provided exculpatory explanations for at least some of the contraband that had been discovered upon execution of the search warrant.

3. *Sentencing*

The jury convicted Meredith of possession of ammunition by a felon, possession of a controlled substance for sale and possession of a controlled substance. Meredith stipulated that he had suffered one prior serious felony conviction within the meaning of the three strikes law (§§ 1170.12, subs. (a)-(d), 667, subs. (b)-(i)), one prior conviction for possession for sale of a controlled substance (Health & Saf. Code, § 11370.2, subd. (c)), and had served two prior prison terms for a felony (§ 667.5, subd. (b)). The court dismissed the strike allegation in the interest of justice and sentenced Meredith to a state prison term of four years, consisting of the upper term of three years on the possession of ammunition by a felon count, plus one year for the prior prison term enhancement, and concurrent four-year terms on the possession for sale and simple possession of methamphetamine counts.

4. *Appeal and Remand*

On appeal Meredith contended the court improperly denied him an evidentiary hearing on his motion to traverse the warrant and denied his constitutional rights by conducting the hearing in camera. We agreed, reversed the two convictions based on evidence obtained from the search and remanded the case for the court to hold a *Franks*

hearing to determine whether the factual basis for the warrant was adequate.⁴ As part of that remedy we directed the trial court to disclose to Meredith the transcript of the in camera hearing at which Detective Arakawa and Lieutenant Tatreau defended the affidavit's showing of probable cause. We affirmed Meredith's conviction for simple possession of methamphetamine.

The remittitur issued on August 2, 2013. On September 23, 2013 Meredith's appellate counsel sent a letter to the trial court requesting compliance with the directive to disclose the transcript of the in camera hearing. On September 27, 2013 the trial court conducted a hearing on the remittitur. No notice of this hearing appears in the record. The People were present, but Meredith was not, nor was counsel present on his behalf. The trial court suggested the People agree to dismiss the reversed counts for the sake of efficiency, as the sentence on the remaining possession count was also four years, the statutory maximum. (See Health & Saf. Code, §§ 11377, subd. (a); 11370, subd. (a); & 1170, subd. (h)(1).) The People concurred and dismissed in the interest of justice the two counts we had reversed. The court announced the sentence on the simple possession count would remain in full force and effect. An abstract of judgment was filed reflecting the possession count as the base term, consisting of a three-year prison term plus a one-year prior prison term enhancement for a total sentence of four years. On October 3, 2013 the trial court reviewed the letter from Meredith's counsel and denied the request as moot.

DISCUSSION

1. A Resentencing Hearing in the Presence of Meredith and His Counsel Was Required

Meredith contends he was entitled to a new sentencing hearing at which he and his counsel were present after the People elected to dismiss the counts we had reversed. The Attorney General, in contrast, argues our disposition in *Meredith I* merely conferred

⁴ Meredith also identified several instructional errors relating to the possession for sale count that we directed the trial court to correct in any retrial.

jurisdiction on the court to proceed on the reversed counts and did not contemplate resentencing on the simple possession count we had affirmed.

The disposition stated: “With the exception of Meredith’s conviction for possession of methamphetamine (count 6), the judgment is reversed. The matter is remanded to the trial court with directions to set aside its December 7, 2010 order denying Meredith’s motion to traverse the warrant and to conduct an evidentiary hearing consistent with this opinion and the requirements set forth in *Franks*. If, after the hearing, the court denies the motion and the People elect to retry Meredith on the possession for sale count, at the retrial an instruction for the lesser included offense of simple possession and a unanimity instruction should be given. If the court finds the affidavit lacking in probable cause and invalidates the warrant, Meredith is entitled to a new trial on count 2, as well as count 4.”

Reversal of some but not all convictions and an ensuing remand to the trial court does not necessarily require resentencing on all counts. (See *People v. Buckhalter* (2001) 26 Cal.4th 20, 35 (*Buckhalter*)). Nonetheless, “section 1260, which sets out the permissible dispositions of a criminal appeal, permits the reviewing court to “remand the cause to the trial court for such further proceedings *as may be just under the circumstances.*””⁵ (*Ibid.*, quoting *People v. Rodriguez* (1998) 17 Cal.4th 253, 258 (*Rodriguez*)). When terms are imposed consecutively, it is often readily apparent that California’s sentencing scheme, in particular the determinate sentencing law, “presents an ‘interlocking’ whole.” (*People v. Rosas* (2010) 191 Cal.App.4th 107, 117.) “[I]f there [is] any ‘one respect’ in which implementation of California’s determinate sentencing law is ‘fairly clear,’ it is that ‘when a defendant is sentenced consecutively for multiple convictions, whether in the same proceeding or in different proceedings, the judgment or

⁵ Section 1260 provides: “The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.”

aggregate determinate term is to be viewed as interlocking pieces consisting of a principal term and one or more subordinate terms.”’ (Id. at p. 117.) Because of the interlocking quality of felony sentences, a court retains jurisdiction to review all parts of a sentence, including portions of the sentence related to convictions affirmed on appeal. (Id. at p. 118; see *People v. Hill* (1986) 185 Cal.App.3d 831, 834 [“When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components.”].) Accordingly, the *Rosas* court rejected the People’s argument the trial court had lacked jurisdiction on remand to reduce excessive restitution and parole revocation fines when the defendant had failed to challenge the fines in the first appeal. (*Rosas*, at p. 119; see *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1257 [the People’s position “assumes that a felony sentence for a multiple-count conviction consists of multiple independent components, rather than being an integrated whole—a view that has been repeatedly rejected by other courts that have considered the issue”].)

While we did not separately direct resentencing in this case, our disposition contemplated further proceedings on the counts involving evidence obtained from the challenged search, including resentencing on those counts depending upon the outcome of those proceedings. Whether resentencing was also appropriate on the count we did not reverse—the simple possession of methamphetamine—depended upon the relationship of the term imposed on that conviction to those eventually imposed, if any, on the reversed convictions. If, after the contemplated proceedings were concluded by the reinstatement of Meredith’s convictions on one or both the reversed counts, the concurrent sentence imposed for the simple possession conviction may have remained proper; and Meredith then would have been required to continue to serve the remainder of his term. (See *Buckhalter*, *supra*, 26 Cal.4th at p. 35; *Rodriguez*, *supra*, 17 Cal.4th at p. 260.)

The sentence on Meredith’s conviction for simple possession of methamphetamine illustrates the interlocking nature of his overall sentence, even though the court imposed

concurrent, rather than consecutive, terms for each count. The People’s sentencing memorandum urged upper term sentences on all convictions, asserting as an aggravating factor “the manner in which the crime was carried out” (referring to the drugs and other items found in the home, trailer and storage unit), “which, indicate[d] planning, sophistication or professionalism.” The People also cited Meredith’s prior convictions (17 misdemeanors and three felonies) and his service of a prior prison term for two of those felonies.⁶ He had also violated probation on multiple occasions with new arrests. The court, in announcing sentence, cited these factors as the basis for choosing the upper term of three years, plus a one-year enhancement for the prior prison term on possession of ammunition charge. The court then imposed, without further explanation, similar four-year, concurrent terms on the possession for sale and simple possession counts. Based on this record it seems apparent the term imposed for simple possession was dependent in substantial part on the facts underlying the convictions obtained as a result of the challenged search warrant. The People’s decision to dismiss these counts rather than retry Meredith made the planning and sophistication of the crime an improper factor to consider in selecting an upper term sentence for the remaining possession charge. Indeed, in the absence of Meredith’s convictions for possession of ammunition and possession of methamphetamine for sale, it is reasonably probable the original sentencing court would have selected a different, shorter term for simple possession of methamphetamine, notwithstanding the existence of other aggravating factors.⁷ (See *People v. Price* (1991) 1 Cal.4th 324, 492 [“[w]hen a trial court has given both proper and improper reasons for a sentence choice, a reviewing court will set aside the sentence

⁶ Meredith’s record consists principally of drug charges and arrests for driving without a license. His felony convictions include one count of residential burglary, one count of possession of a controlled substance for sale and one count of simple possession of methamphetamine.

⁷ It also appears from the record Meredith may be eligible to seek reduction of his sentence pursuant to Proposition 47, which reduced possession of methamphetamine, among other controlled substances, to a misdemeanor. (See Prop. 47, § 13, codified at Health & Saf. Code, § 11377.)

only if it is reasonably probable that the trial court would have chosen a lesser sentence had it known that some of its reasons were improper”].)

Resentencing on the simple possession conviction after remand, therefore, was both proper and just under the circumstances of this case. That Meredith, represented by counsel, had a right to be present for the court’s exercise of discretion, even if to select the identical term, is beyond dispute. In *Rodriguez, supra*, 17 Cal.4th 253, for instance, in considering whether a defendant had the right to be present when on remand the trial court was to exercise its discretion whether to dismiss a prior strike under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, the Supreme Court observed, “A defendant, of course, has a constitutional right to be present at all critical stages of the criminal prosecution, i.e., ‘all stages of the trial where his absence might frustrate the fairness of the proceedings’ [citation] or ‘whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.’” (*Rodriguez*, at p. 260.) In addition, section 1260 may, in some circumstances, also require the defendant’s presence: “Because to permit the trial court to decide how to exercise its discretion . . . without affording defendant and his counsel an opportunity to address the subject would be manifestly unfair, section 1260 provides sufficient authority to require defendant’s presence [at a *Romero* hearing] on remand.” (*Rodriguez*, at p. 260.) The Court rejected the People’s argument the defendant’s presence would serve no useful purpose: “The evidence and arguments that might be presented on remand cannot justly be considered ‘superfluous,’ because defendant and his counsel have never enjoyed a full and fair opportunity to marshal and present the case supporting a favorable exercise of discretion.” (*Id.* at p. 258; see *Buckhalter, supra*, 26 Cal.4th at p. 35 [discussing *Rodriguez*: “Under section 1260 itself, we concluded, it was ‘just under the circumstances’ to require the defendant’s presence with counsel on remand, even if the trial court ultimately decided against alteration of its earlier Three Strikes sentence, in order to allow the defendant to advance any arguments for the favorable exercise of the court’s discretion”].)

Accordingly, the trial court erred by leaving in place the original sentence on Meredith's simple possession conviction after the People elected to dismiss the counts for possession of ammunition by a felon and possession of methamphetamine for sale. On remand Meredith, represented by counsel, is entitled to be present for resentencing on his conviction for simple possession of methamphetamine.

2. *Because the Charges Arising from the Challenged Search Were Dismissed, the Direction To Unseal Arakawa's Affidavit Is Moot*

Meredith contends he is entitled to the disclosure of the suppression hearing transcript that was sealed by the trial court after it found probable cause to support the search warrant. The Attorney General correctly asserts the request became moot when the People dismissed the counts supported by evidence obtained pursuant to the warrant.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) Moreover, "an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events." (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.) "A case is moot when the decision of the reviewing court 'can have no practical impact or provide the parties effectual relief.'" (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214; see *Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1354 ["[a]n appeal will be dismissed where the issues have become moot"]; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316 ["[w]hen no effective relief can be granted, an appeal is moot and will be dismissed"], citing *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.)

Meredith argues disclosure is nonetheless necessary to assess whether any of the statements made by Detective Arakawa and Lieutenant Tatreau are relevant to Meredith's subsequent arrest for simple possession. We have reviewed the transcript of the hearing

and conclude none of the statements would assist Meredith in his defense of that charge. Accordingly, we dismiss this contention as moot.⁸

DISPOSITION

The sentence on count 6 (possession of methamphetamine) is vacated. The matter is remanded to the superior court for resentencing on that count. In addition, the court security fee of \$120 initially imposed by the court must be reduced to \$40 due to the dismissal of counts 2 and 4. The new abstract of judgment shall also reflect Meredith is entitled to three days of presentence custody credits.

PERLUSS, J.

We concur:

ZELON, J.

IWASAKI, J.*

⁸ Our conclusion that the question whether to disclose the redacted hearing transcript is moot in this appeal does not have any bearing on whether the transcript may be available to Meredith through other avenues, including but not limited to habeas or other post-conviction relief.

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