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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CLINT WAYNE WARDLOW,  
  
Defendant and Appellant.

C066815  
  
(Super. Ct. No.  
08F04808)

An investigation of cell phone and wire communications revealed defendant Clint Wayne Wardlow dealt in methamphetamine and cocaine. An information charged defendant with conspiracy to sell a controlled substance. (Pen. Code, § 182, subd. (a)(1); Health & Saf. Code, § 11379, subd. (a).) Defendant entered a plea of no contest. The court sentenced defendant to seven years in state prison and ordered him to register as a narcotics offender. Defendant appeals, arguing

the court erred in ordering him to register, since conspiracy is not a qualifying offense under Health and Safety Code section 11590. We shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

In July 2007 officers received authorization from the superior court to intercept the cellular telephone and wire communications with numbers associated with Jesus Ramirez. The investigation identified Ramirez as a methamphetamine and cocaine trafficker. Officers reviewed telephone conversations between Ramirez and defendant in which the duo discussed narcotic transactions. Further investigation revealed defendant was a subdealer of narcotics for Ramirez. A warrant was issued for defendant's arrest, and he was taken into custody.

An information charged defendant, along with a codefendant, with conspiracy to commit a crime, the sale of a controlled substance. The information further alleged that defendant suffered a previous conviction in 1997 for possession for sale of a controlled substance and a prior conviction in 1996 for robbery, a serious felony. (Health & Saf. Code, § 11370.2, subd. (a); Pen. Code, §§ 211, 667, subds. (b)-(i), 1170.12.)

Defendant entered a plea of not guilty and denied the special allegations. Subsequently, defendant withdrew his not guilty plea, entered a plea of no contest, and admitted both prior convictions.

The court sentenced defendant to two years, doubled pursuant to Penal Code sections 667, subdivisions (b) through (i) and 1170.12, plus three years for the enhancement under

Health and Safety Code section 11370.2, subdivision (a), for a total term of seven years in state prison. The court ordered defendant to pay restitution fines. Finally, the court ordered defendant to register as a narcotics offender under Health and Safety Code section 11590.<sup>1</sup>

The court issued a certificate of probable cause. Defendant filed a timely notice of appeal.

#### **DISCUSSION**

Section 11590 requires defendants convicted of certain crimes to register as narcotics offenders. Defendant was convicted of conspiracy, an offense not listed in section 11590. Therefore, defendant argues, the court's registration order is unauthorized and must be stricken.

Section 11590 states: "(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or

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<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise designated.

attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

"For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

"(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall, within 30 days of his or her coming into any county or city, or city and county, in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

"(c) This section does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377.

"(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990."

As defendant points out, conspiracy is not among the offenses listed in section 11590. However, in *People v. Villela* (1994) 25 Cal.App.4th 54 (*Villela*), the court concluded the registration requirement in section 11590 applies to a defendant convicted of conspiracy, even though conspiracy is not specifically listed, so long as the target offense is listed. (*Villela*, at pp. 59-61.) The defendant in *Villela* was ordered to register after being convicted of conspiracy to transport heroin. The court found conspiracy is punishable in the same manner and to the same extent as the target offense. (*Ibid.*)

Defendant concedes a defendant convicted of conspiracy must be punished in the same manner and to the same extent as provided for the punishment of the target offense. (*People v. Athar* (2005) 36 Cal.4th 396, 401 (*Athar*).) However, as defendant points out, the Supreme Court in *People v. Castellanos* (1999) 21 Cal.4th 785 (*Castellanos*) found a registration requirement is not "punishment."

In *Castellanos*, the court considered the sex offender registration requirement and determined: "The sex offender registration requirement serves an important and proper remedial

purpose, and it does not appear that the Legislature intended the registration requirement to constitute punishment. Nor is the sex offender registration requirement so punitive in fact that it must be regarded as punishment, despite the Legislature's contrary intent. Although registration imposes a substantial burden on the convicted offender, this burden is no more onerous than necessary to achieve the purpose of the statute. [Fn. omitted.] We conclude that the sex offender registration requirement imposed by [Penal Code] section 290 does not constitute punishment for purposes of ex post facto analysis." (*Castellanos, supra*, 21 Cal.4th at p. 796.)

Courts have analogized the narcotics registration requirement to the sex offender registration requirement. (*In re Luisa Z.* (2000) 78 Cal.App.4th 978, 983.) Therefore, defendant reasons, since the *Villela* court based its ruling on the registration requirement as punishment, *Castellanos* overruled *Villela* and the court in the present case improperly ordered defendant to register based on his conviction for conspiracy.

However, the court in *Villela* also found: "It is also logical that one who is convicted of conspiracy to commit an offense where conviction of the underlying offense would require registration likewise be required to register, for proof of conspiracy requires both the specific intent to agree or conspire and the specific intent to commit the offense which is the subject of the conspiracy. [Citation.] It would be patently absurd to require a person who committed the general

intent crime of transporting heroin to register as a narcotics offender while failing to require a person convicted of a crime requiring the formulation of specific intent to transport heroin to register." (*Villela, supra*, 25 Cal.App.4th at p. 61.)

*Villela* referenced *People v. Crowles* (1993) 20 Cal.App.4th 114 (*Crowles*), which held "the Legislature intended to include attempts within the scope of section 11590, and that a person convicted of attempting to commit one of the listed offenses is subject to the registration requirement." (*Crowles*, at p. 119.) *Crowles* concluded the Legislature intended to require registration of defendants convicted of a broad span of felony drug offenses, and if section 11590 were read literally, defendants convicted of attempting a serious drug offense would not be required to register, while those convicted of a completed, but less serious, offense would have to register. The defendant convicted of attempting a serious drug offense is certainly as culpable as that of someone convicted of a lesser offense, and "the public interest in requiring registration by the former is even clearer than in the case of the latter." (*Crowles*, at p. 118.)

*Crowles* also distinguished our decision in *People v. Brun* (1989) 212 Cal.App.3d 951, in which we held a defendant convicted of violating section 11378 may not be ordered to register as a narcotics offender. (*Brun*, at pp. 954-955.) The court in *Crowles* determined: "While *Brun* dealt with section 11590, it involved conviction for a completed offense not listed in that statute rather than conviction for the

attempted commission of a listed offense." (*Crowles, supra*, 20 Cal.App.4th at p. 117.)

Defendant labels as "dicta and not the holding of the case" *Villela's* conclusion that including conspiracy in section 11590's registration requirement is logical and reasonable based on the specific intent required both for the underlying offense and the conspiracy. We disagree. *Villela's* discussion of specific intent is not merely editorializing or extraneous comment. Instead, it explains the court's reasoning in including conspiracy in section 11590.

In addition, defendant claims *Crowles* "is not compelling" and it attempts to distinguish *Brun* "on somewhat dubious grounds." According to defendant, *Crowles* found section 11590 ambiguous since it "does mention attempts" (*Crowles, supra*, 20 Cal.App.4th at p. 117) and "the Legislature made an express, if somewhat awkward, reference to attempts" (*id.* at p. 118). Here, defendant argues, there is no similar reference to conspiracy.

However, *Crowles* did not base its decision on the mention of attempts in section 11590, but on the anomalous result of requiring registration for simple possession but not requiring registration for an attempt to sell drugs to a minor on school grounds while school is in session, a much more serious drug offense. (*Crowles, supra*, 20 Cal.App.4th at p. 118.) If we determine conspiracy to commit one of the listed offenses is not covered by section 11590, we face a similarly odd result.

Any further doubt concerning this matter is resolved by the Supreme Court's decision in *Athar, supra*, 36 Cal.4th 396, where the court considered an argument, based on *Castellanos, supra*, 21 Cal.4th 785, that *Villela* incorrectly determined the additional registration requirement was equal to a punishment. The Supreme Court concluded that, even assuming the *Villela* court erred in this regard, it was "correct in reasoning that [Penal Code] section 182 requires sentencing to the same extent as the underlying target offense . . . ." (*Athar*, at p. 406.) The registration requirement imposed here was a necessary element of the sentencing scheme for the sale of a controlled substance and thus the trial court correctly imposed the requirement in sentencing defendant for conspiracy to sell a controlled substance.

**DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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NICHOLSON, J.

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MAURO, J.