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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE DEMONE CRAWFORD,

Defendant and Appellant.

C069083

(Super. Ct. No. 10F02985)

A jury convicted defendant Ronnie Demone Crawford of possession of cocaine base for sale (Health & Saf. Code, § 11351.5—count one)¹ and possession of heroin for sale (*id.*, § 11351—count two). The jury found that defendant was not personally armed with a firearm in the commission of counts one and two and was unable to reach a verdict on counts three and four (felon in possession of a firearm and ammunition, respectively). The trial court declared a mistrial on counts three and four, which were later dismissed on the People’s motion. In bifurcated proceedings, the trial court found that defendant had

¹ Undesignated statutory references are to the Health and Safety Code.

sustained two prior drug convictions (*id.*, § 11370.2, subd. (a)) and four prior prison terms (Pen. Code, § 667.5, subd. (b)).

The trial court denied probation and sentenced defendant to state prison for an aggregate term of 15 years: that is, the midterm of four years on count one, a consecutive one-third the midterm or one year on count two, a consecutive three-year term on each of the two prior drug conviction allegations, and a consecutive one-year term on each of the four prior prison term allegations.

Defendant appeals. He contends (1) insufficient evidence supports the trial court's findings on the two prior drug conviction allegations; (2) the trial court abused its discretion in imposing a consecutive sentence on count two; and (3) the trial court erred in imposing, and insufficient evidence supports, particular fees. With respect to defendant's first contention, the People concede that remand for retrial is required because the record on appeal does not support the trial court's findings on the prior drug conviction allegations. We reject the concession that remand for retrial is required and conclude sufficient evidence supports the trial court's findings on the priors. With respect to defendant's remaining two contentions, we agree with the People that the issues are forfeited by defendant's failure to object in the trial court.

FACTUAL BACKGROUND

On May 6, 2010, officers conducted a narcotics search at defendant's home. Officers seized 0.3 grams of tar heroin hidden under the armrest of a couch, 0.48 grams of heroin from the bathroom, 11.92 grams of heroin and 80 grams of cocaine base packaged in multiple baggies, together in a jewelry box in the garage, marijuana in the same jewelry box as well as some marijuana in a car parked in front of the garage registered to someone who did not live in the house, a loaded nine-millimeter handgun and ammunition in the garage, almost \$1,700 in cash and packaging materials in a pair of shorts in the master bedroom, a digital scale and a knife with narcotics residue in the

master bedroom, baggies with narcotics residue under the bathroom sink, plastic baggies with corners cut off in the trash, and tinfoil pieces with residue in the house and trash. Defendant admitted using heroin and tin foil to smoke it with others who came to the house. When accused of being a “mid-level” dealer, defendant responded, “Two ounces is mid-level dealer? I can’t even pay all my bills with what I make.”

DISCUSSION

I. Sufficiency of Evidence of Prior Drug Conviction Allegations

The information alleged two prior drug convictions (Health & Saf. Code, § 11370.2, subd. (a)), a 1996 San Joaquin County conviction for violation of Health and Safety Code section 11351 and a 2003 Sacramento County conviction for violation of the same offense. The trial court found both allegations true as well as four prior prison terms (Pen. Code, § 667.5, subd. (b)) that had also been alleged.

Defendant contends that insufficient evidence supports the trial court’s true findings only on the two prior drug conviction allegations. He argues that the exhibits presented at the bench trial on the priors do not show that he was convicted in 1996 and 2003 of possession of a controlled substance for sale (Health & Saf. Code, § 11351) for purposes of a three-year enhancement under Health and Safety Code section 11370.2, subdivision (a).² Defendant concedes that the exhibits show, for purposes of the prior prison term allegations (Pen. Code, § 667.5, subd. (b)), that he served a prior prison term for drug convictions.

² Section 11370.2, subdivision (a) provides, in relevant part, as follows: “Any person convicted of a violation of, or of a conspiracy to violate, Section[s] 11351 [or] 11351.5 . . . shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, . . . , whether or not the prior conviction resulted in a term of imprisonment.”

Although noting that the abstracts of judgment of the 1996 and 2003 section 11351 convictions were introduced at the jury trial on the underlying offenses, the People “reluctantly conclude[] that the appellate record . . . does not support the trial court’s true findings [on the prior drug conviction allegations] and that the matter must be remanded for retrial of those allegations.”

At the jury trial on the underlying offenses, the People’s exhibits 63A and 64A, both abstracts of judgment, were admitted into evidence. They reflect that defendant was convicted of violating Health and Safety Code section 11351 in 1996 and again in 2003. The trial judge admitted the evidence of defendant’s priors at the jury trial pursuant to Evidence Code section 1101, subdivision (b). Defendant testified at the jury trial and admitted: a conviction for a “drug sales case” in 1996; two drug sales convictions, the latter of which was in 2003; and a 1996 and a 2003 conviction for felonies involving moral turpitude. Defendant, shown exhibits 63A and 64A, admitted the same related to him and that he had entered a plea in both cases.

At the bench trial on all the priors (the two prior drug convictions and the four prior prison terms), the prosecutor presented two Penal Code section 969b packets. As the section 969b packets appear in the clerk’s transcript on appeal, those packets do *not* contain the abstracts of judgment of defendant’s 1996 and 2003 convictions for violation of Health and Safety Code section 11351, abstracts of judgment which were admitted into evidence at the jury trial.

“ ‘As a practical matter, . . . prior convictions are normally proven by the use of documentary evidence alone.’ [Citation.] ‘Once the prosecutor presents this prima facie evidence of conviction, the trial court is allowed to make reasonable inferences from the facts presented. If there is no evidence to the contrary, the trial court may consider the abstract and the facts of the particular case, and utilizing the official duty presumption,

find a defendant was convicted of and served the term of imprisonment for the listed felony.’ ” (*People v. Prieto* (2003) 30 Cal.4th 226, 258.)

Defendant argues that the Penal Code section 969b packets do not show that he was convicted in 1996 and 2003 of violating Health and Safety Code section 11351. Citing only CALCRIM No. 3101, defendant claims that evidence from the jury trial on the underlying offenses cannot be considered at the bench trial on the priors. Thus, he contends insufficient evidence supports the two prior drug conviction allegations.

We reject defendant’s argument. First, a bench trial was held on defendant’s priors, not a jury trial; thus, CALCRIM No. 3101 does not apply.³ Second, the bench notes say to “[g]ive the bracketed paragraph” only “on request.” (Bench Notes to CALCRIM No. 3101 (Jan. 2006) pp. 867-868, 4th par.) And, third, this is not a case of failure of proof requiring remand for retrial on the 1996 and 2003 prior drug conviction allegations as defendant claims and the People incorrectly concede. (*Monge v. California*

³ CALCRIM No. 3101 provides:

“The People have alleged that the defendant was previously convicted of (another/other) crime[s]. It has already been determined that the defendant is the person named in exhibit[s] _____ <insert number[s] or description[s] of exhibit[s]>. You must decide whether the evidence proves that the defendant was convicted of the alleged crime[s].

“The People allege that the defendant has been convicted of:

“[1.] A violation of _____ <insert code section[s] alleged>, on _____ <insert date>, in the _____ <insert name of court>, Case Number _____ <insert docket or case number>(;/.)

“[AND <Repeat for each prior conviction alleged.>]

“[In deciding whether the People have proved the allegation[s], consider only the evidence presented in this proceeding. Do not consider your verdict or any evidence from the earlier part of the trial.]

You may not return a finding that (the/any) alleged conviction has or has not been proved unless all 12 of you agree on that finding.”

(1998) 524 U.S. 721, 734 [141 L.Ed.2d 615, 628], affg. *People v. Monge* (1997) 16 Cal.4th 826, 843, 845; *People v. Barragan* (2004) 32 Cal.4th 236, 243-245; *People v. Miller* (2008) 164 Cal.App.4th 653, 668; *People v. Jenkins* (2006) 140 Cal.App.4th 805, 813-814; *Cherry v. Superior Court* (2001) 86 Cal.App.4th 1296, 1305.) Instead, this is a case where the court and the parties proceeded as if the 1996 and 2003 abstracts of judgment, which obviously had been removed from the Penal Code section 969b packets for jury trial on the underlying offenses, were included in the section 969b packets to prove the priors at the bench trial. At the bench trial, the prosecutor submitted the packets and defense counsel submitted on the evidence. Defense counsel raised no argument that there was an absence of proof of the prior drug conviction allegations. Defense counsel had seen the packets and was “satisfied with seeing them.” And rightly so. Defense counsel had previously opposed admitting evidence of defendant’s 1996 and 2003 drug convictions at the jury trial. The court necessarily considered the abstracts in finding the prior drug conviction allegations to be true. Under the circumstances, we will consider the abstracts. (Cf. *Cohon v. Department of Alcoholic Beverage Control* (1963) 218 Cal.App.2d 332, 335, fn. 10 [“where the record shows that a document has been considered by the court and the parties as being in evidence, a reviewing court will not look for technical reasons to exclude from consideration any part of the record which was before the court below”]; *Estate of Connolly* (1975) 48 Cal.App.3d 129, 132, fn. 4; *Walsh v. Walsh* (1952) 108 Cal.App.2d 575, 578-579.) With the abstracts, sufficient evidence supports the court’s true findings on the prior drug convictions.

II. Consecutive Sentence on Count Two

Defendant contends the trial court abused its discretion in imposing a consecutive sentence on count two. We conclude that defendant has forfeited the issue.

The probation report recommended the midterm on count one, a consecutive one-third the midterm on count two, citing California Rules of Court, rule 4.425(a)(1)⁴ (“The crimes and their objectives were predominantly independent of each other”), and consecutive terms for the two prior drug convictions and four prior prison terms.

Defendant filed a written request for an aggregate sentence of eight years. He did not argue that consecutive sentencing would be improper. He argued that an eight-year sentence would be adequate in view of his “lack of violent conduct” and the fact the jury found the gun enhancement not true. The requested sentence could be structured with the midterm on count one (four years), one of the prior drug convictions (three years), and one prison prior (one year). Defense counsel asked that the remaining enhancements be stricken pursuant to Penal Code section 1385 or that the court suspend imposition of the remaining terms.

At sentencing, defense counsel stated that he had received the probation report and discussed it with defendant. He reiterated his request for a lesser sentence. After noting defendant’s lengthy criminal record of using drugs and being a drug dealer, the trial court stated its intent to impose the recommended sentence “[b]ased upon [defendant’s] record.” In imposing a consecutive sentence for count two, the trial court did not expressly state the reasons. Defense counsel did not object.

Defendant’s failure to raise the issue in the trial court forfeits the issue on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 353; *People v. Quintanilla* (2009) 170 Cal.App.4th 406, 412-413.) In any event, in deciding to follow the probation report’s recommended sentence—which included a consecutive sentence on count two—the trial court relied upon defendant’s record stating, “Based upon your record, it’s a fair sentence. I’m going

⁴ All rule references are to the California Rules of Court.

to follow the recommendation.” (Rule 4.425(b).)⁵ The trial court’s reliance upon defendant’s criminal history is supported by the record. Over 10 years, in addition to defendant’s two prior convictions for possession of controlled substances for sale and four prior prison terms (rule 4.425(b)(2)), defendant was convicted three times for possession of controlled substances and one time for assault with a deadly weapon. When he committed the current offenses, he was on parole. We find no abuse of discretion.

III. Imposition of Fees

For the first time on appeal, defendant challenges the court’s imposition of the main jail booking and classification fees (Gov. Code, § 29550.2) and the drug program fee (Health & Saf. Code, § 11372.7) and assessments. Defendant contends (1) insufficient evidence supports imposition of the fees and (2) the court failed to find that defendant has the ability to pay the fees. Contrary to defendant’s claim otherwise, he has forfeited his claims by failing to object in the trial court.

The probation officer recommended the now challenged fees. Defendant’s attorney received the probation report prior to sentencing. Defense counsel did not object when the fees were imposed.

Having failed to object below to the imposition of the fees, defendant’s belated claims on appeal are forfeited. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469 [restitution fine].)⁶

⁵ Defendant repeatedly indicates that the trial court relied upon the probation officer’s recommendation of consecutive sentences based on rule 4.425(a)(1) (crimes predominantly independent of each other). We disagree with defendant’s reading of the record.

⁶ The California Supreme Court granted review in *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513, where defendant forfeited

DISPOSITION

The judgment is affirmed.

_____ BUTZ _____, Acting P. J.

We concur:

_____ MURRAY _____, J.

_____ DUARTE _____, J.

his claim of the sufficiency of the evidence to support a jail booking fee by failing to object. Until the Supreme Court instructs otherwise, we will continue to follow our holding in *People v. Gibson, supra*, 27 Cal.App.4th at pages 1468 to 1469 (failure to object forfeits the issues of ability to pay and sufficiency of the evidence of the same).