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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID MICHAEL SPRINGLE,

Defendant and Appellant.

C070077

(Super. Ct. No. 11F06825)

Defendant David Michael Springle appeals the sentence imposed following his plea of no contest to transporting heroin. (Health & Saf. Code, § 11352, subd. (a).) Defendant contends: (1) he should have been granted Proposition 36 probation, as there is not substantial evidence that he did not transport the heroin for personal use; and (2) there is not substantial evidence he had the ability to pay the booking and jail classification fees. As a result of defendant's plea agreement, we find he is barred from raising the issue of his entitlement to Proposition 36 probation on appeal. We further find the

statute under which the criminal justice administration fees were imposed in this case does not require a finding of an ability to pay. Accordingly, we shall affirm the judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND¹

Defendant was charged with possessing heroin for sale (Health & Saf. Code, § 11351), possessing methamphetamine for sale (*ibid.*), possessing oxymorphone for sale (*ibid.*), possessing alprazolam for sale (*id.*, § 11375, subd. (b)), transporting heroin (*id.*, § 11352, subd. (a)), transporting methadone (*ibid.*), and transporting oxymorphone (*ibid.*). Defendant entered into a negotiated plea whereby he pleaded no contest to transporting heroin in exchange for a low term sentence of three years in county jail. The remaining counts were dismissed with a *Harvey*² waiver.

Prior to entering his plea, defense counsel noted “[j]ust for the record, we did discuss the possibility of Prop 36 based on the facts and based on the facts that were brought out in chambers before court was in session.” The court acknowledged the discussion: “The Court has foreclosed that, yes. It is factually not appropriate or legally.” There was no further discussion on the record regarding Proposition 36. After being advised of his rights and the consequences of his plea,

¹ Because of our resolution of the claims on appeal, a detailed recitation of the underlying factual and procedural history of this case is not necessary.

² *People v. Harvey* (1979) 25 Cal.3d 754.

defendant pleaded no contest to transporting a total weight of 5.45 grams of heroin.

DISCUSSION

I. Evidence re Transportation of Heroin

Defendant contends there is not substantial evidence that he did not transport the heroin for personal use and, accordingly, he must be granted Proposition 36 probation. Relying on *People v. Esparza* (2003) 107 Cal.App.4th 691, 699, he also contends he did not waive this argument by failing to request Proposition 36 probation, because "it is mandatory unless he is disqualified by other statutory factors."

It is true that in general, "[w]hen a defendant is eligible for Proposition 36 treatment, it is mandatory unless he is disqualified by other statutory factors, including refusing drug treatment. ([Pen. Code,] § 1210.1, subd. (b)(4).)" (*People v. Esparza, supra*, 107 Cal.App.4th at p. 699.) However, the reasoning in *Esparza* does not apply in this case, as *Esparza* did not involve a bargained-for sentence. In this case, defendant pleaded guilty and agreed to a disposition outside the mandates of Proposition 36, in exchange for dismissal of multiple additional counts that would have exposed him to additional prison time and precluded the application of Proposition 36 probation. (*People v. Chatmon* (2005) 129 Cal.App.4th 771, 773.) He has not presented any facts or evidence challenging the validity of his plea. Having received the benefit of his bargain to a stipulated sentence, defendant is barred from

raising this issue on appeal. (*Chatmon*, at p. 773; *People v. Hester* (2000) 22 Cal.4th 290, 295 [defendants are estopped from complaining of sentences to which they agreed].)

II. Evidence re Ability to Pay Fees

Defendant also contends there is not substantial evidence supporting a finding that he has the ability to pay the booking and classification fees, as required by Government Code section 29550.2.³ The People respond that the fees were not imposed under section 29550.2, but rather under section 29550.1, which does not require a finding of an ability to pay. We agree with the People that the unstated statutory basis for the imposition of the criminal justice administration fees was section 29550.1.

The Government Code provides for imposition of criminal justice administration fees to reimburse arresting agencies for the cost of booking and processing arrested persons. (§§ 29550-29550.2.) Which particular statutory provision applies to a defendant is determined by the identity of the entity whose employees arrested the defendant: section 29550.1⁴ authorizes

³ Undesignated statutory references are to the Government Code.

⁴ Section 29550.1 provides: "Any city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court

the fee for local arrestees; and, section 29550.2⁵ authorizes the fee for arrestees not covered in sections 29550 and 29550.1, such as state arrestees.

In imposing the booking and classification fees, the court did not identify the statutory basis of the fees. The record reflects defendant was arrested by Citrus Heights police officers. Accordingly, the fees must have been imposed under section 29550.1. Fees imposed under section 29550.2 expressly require that the defendant have the ability to pay. In contrast, section 29550.1 provides for payment of the fees by a convicted person but omits the language that refers to an ability to pay. (See fns. 4 and 5, *ante*.) Thus, section 29550.1 does not require a finding of an ability to pay before these fees are imposed. Defendant's contention fails.

shall, as a condition of probation, order the convicted person to reimburse the city, special district, school district, community college district, college, university, or other local arresting agency for the criminal justice administration fee."

⁵ Section 29550.2, subdivision (a) provides in pertinent part: "Any person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. . . . If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee."

We note that the preprinted Judicial Council abstract of judgment form offers only section 29550.2 as a possible statutory basis for these fees. As explained above, it is not. We order the trial court to correct the abstract of judgment to reflect the correct statutory basis for the imposition of the fees, section 29550.1.

DISPOSITION

The judgment is affirmed. The court is ordered to correct the abstract of judgment to reflect that the booking fee and classification fee were imposed pursuant to section 29550.1 and to forward a certified copy to the California Department of Corrections and Rehabilitation.

_____ BUTZ _____, Acting P. J.

We concur:

_____ MURRAY _____, J.

_____ DUARTE _____, J.