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

THE PEOPLE,

Plaintiff and Respondent,

v.

PAMELA ROSE FOGG,

Defendant and Appellant.

C070468

(Super. Ct. No. CRF113427 &
CRF110775)

Defendant Pamela Rose Fogg pled no contest to one count of possession for sale of heroin and three counts of sale of heroin. (Health & Saf. Code, §§ 11351, 11352, subd. (a).) She further admitted, as to one count of sale of heroin, that she was on bail at the time of the offense (Pen. Code, § 12022.1, subd. (b)), and admitted she had served a prior prison term (*id.* § 667.5, subd. (b)). The trial court sentenced her to state prison for 11 years and 8 months.

On appeal, defendant contends she is eligible for a county jail sentence. Due to a recent statutory amendment, we agree.

DISCUSSION

At the time of sentencing on February 23, 2012, the on-bail enhancement, attached to the count selected as the principal term, provided for “an additional two years in state prison[.]” (Former Pen. Code, § 12022.1, subd. (b); Stats. 2010, ch. 711, § 5.) For this reason, the trial court ordered defendant’s sentence to be served in state prison.¹

However, during the pendency of this appeal, the Legislature amended the statute to omit the “in state prison” language, so that the enhancement now provides for “an additional two years which shall be served consecutive to any other term imposed by the court.” (Stats. 2012, ch. 43, § 62, eff. June 27, 2012.) This was designed to provide increased opportunities for alternative county jail sentences, a lesser form of punishment. (See *People v. Lynch* (2012) 209 Cal.App.4th 353, 361, fn. 4.)

The People argue that Penal Code amendments are presumed to operate prospectively unless the Legislature specifies otherwise and that presumption has not been rebutted here. (Pen. Code, § 3; see *People v. Brown* (2012) 54 Cal.4th 314, 319 (*Brown*)). However, in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), our high court effectively created an exception for statutory amendments that reduce punishment for a particular crime, reasoning that, “It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply.” (*Estrada, supra*, 63 Cal.2d at p. 745; see *Brown, supra*, 54 Cal.4th at pp. 323-325.) “*Estrada* [applies] to statutes governing penalty enhancements as well as statutes governing substantive offenses.” (*People v. Nasalga* (1996) 12 Cal.4th 784, 792.)

Because defendant’s judgment was not final at the time of the amendment, but was still pending on direct appeal, defendant is entitled to the benefit of the statutory

¹ We need not detail the underlying facts of defendant’s offenses of conviction; those facts are not relevant to the issue on appeal.

amendment, eliminating a mandatory state prison sentence. (See *Estrada, supra*, 63 Cal.2d at pp. 746-748.) Accordingly, resentencing is required.

DISPOSITION

The judgment is reversed and cause remanded for resentencing consistent with this opinion.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.