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

THE PEOPLE,

Plaintiff and Respondent,

v.

FARON MELLO,

Defendant and Appellant.

C070593

(Super. Ct. No. 11F05301)

After officers found a loaded handgun under his mattress, defendant Faron Mello was convicted of (among other crimes) four counts of child endangerment, one for each of the four children who lived in the house. On appeal, defendant contends the trial court should have stayed the sentences it imposed on three of the four child endangerment counts pursuant to Penal Code¹ section 654. The People concede the issue.² We accept

¹ Further undesignated section references are to the Penal Code.

² The parties also agree that the California Supreme Court's recent decision in *People v. Correa* (2012) 54 Cal.4th 331 (*Correa*), which would otherwise preclude defendant's contention, does not apply. See Discussion, *post*.

the People's concession and shall modify the judgment to stay the sentences on three of defendant's child endangerment convictions. We shall affirm the judgment as modified.

BACKGROUND

Police found a loaded semi-automatic handgun under the mattress in the master bedroom in a probation search of the apartment where defendant lived with his girlfriend and her three children (and where his toddler son sometimes stayed). The handgun had no trigger lock, and the safety was not engaged. Additional ammunition (bullets and a live shotgun shell) was found in the closet and in a nightstand drawer.

Defendant was charged with four counts of child endangerment (counts one through four), one count for each of the four children who shared the apartment.

He was also charged with unlawfully possessing a firearm as a felon (count five), two counts of unlawfully possessing ammunition as a felon (counts six and seven), and, at trial, the parties stipulated that defendant had a prior felony conviction.

The jury acquitted defendant of one count of unlawfully possessing ammunition (count seven), but convicted him of all the other charges.

At sentencing, the trial court selected count one as the principal offense, and imposed the upper-term of six years. On the other child endangerment counts (two, three, and four) the trial court also imposed the upper term of six years, to run concurrently. On the unlawful gun and ammunition possession counts, the trial court imposed mid-term sentences, to run concurrently.

DISCUSSION

Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

By its plain terms, section 654 bars multiple punishments under "more than one provision" of law of a single, physical act or omission. Fifty-two years ago, however, in

Neal v. State of California (1960) 55 Cal.2d 11 (*Neal*), our Supreme Court substantially enlarged the statute's scope by, among other things, barring multiple punishment for violations of a single provision of law. (*Id.* at p. 18, fn. 1 ["Although section 654 does not expressly preclude double punishment when an act gives rise to more than one violation of the same Penal Code section or to multiple violations of the criminal provisions of other codes, it is settled that the basic principle it enunciates precludes double punishment in such cases also"].) Since then, courts have relied on this footnote in *Neal* to apply section 654 to multiple punishments of the same provision of law. (See *Correa, supra*, 54 Cal.4th at pp. 343-344, citing, as examples, *People v. Davey* (2005) 155 Cal.App.4th 384 and *People v. Hall* (2000) 83 Cal.App.4th 1084.)

This was the state of the law when defendant committed his crimes and when he was sentenced. Defendant was convicted and sentenced for four counts of child endangerment based on a single act, i.e., having the loaded handgun under his mattress. Under *Neal* and its progeny, defendant should not have been separately punished for three of his four convictions for child endangerment.

Recently, the California Supreme Court has disapproved the application of section 654 to multiple punishments of the same provision of law. In *Correa, supra*, 54 Cal.4th 331, the Court concluded that neither the language nor the purpose of section 654 justify applying it to bar punishment for multiple violations of the same provision of law (*Correa*, at pp. 340-341), and *Neal's* footnote to the contrary was dictum (*Correa*, at p. 344). But the Supreme Court in *Correa* also reasoned that its rejection of the practice of applying 654 to multiple violations of the same statute -- approved in the *Neal* footnote and applied by courts for 50 years -- constitutes a "new rule" which may be applied prospectively only. (*Correa*, at pp. 344-345.)

Accordingly, under the circumstances presented here, we agree with the parties that section 654 requires the stay of three of defendant's four sentences for child endangerment.

DISPOSITION

The sentences on defendant's child endangerment convictions on counts two, three, and four are stayed. As thus modified, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment reflecting this modification and forward a certified copy thereof to the Department of Corrections and Rehabilitation.

BLEASE, J.

We concur:

RAYE, P. J.

HULL, J.