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

THE PEOPLE,

Plaintiff and Respondent,

v.

PATTYE ELEANOR GALBA,

Defendant and Appellant.

C076492

(Super. Ct. Nos.
13F4136 & 13F5812)

Defendant Pattye Eleanor Galba appeals from a judgment following a plea in the trial court. Appointed counsel for defendant asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We find no arguable error that would result in a disposition more favorable to defendant; however, we find that the court failed to impose a required criminal laboratory analysis fee. Therefore, we modify and affirm the judgment.

I

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On May 30, 2013, a narcotics investigation team served a search warrant at defendant's home. In the course of the search, officers found 144.7 grams of methamphetamine, 5,194.91 grams of processed marijuana, scales, paraphernalia, pay/owe sheets, and \$3,487. Defendant was arrested and read her *Miranda*¹ rights. She admitted to using and selling methamphetamine.

Defendant was charged, in case No. 13F4136, with possession for sale of a controlled substance--methamphetamine (Health & Saf. Code, § 11378; count 1);² possession for sale of marijuana (§ 11359; count 2); and maintaining a place for selling or using a controlled substance (§ 11366; count 3). She was also alleged to have three prior narcotics convictions (§ 11370.2, subd. (c)). She was arraigned and released on bail.

On August 1, 2013, officers searched defendant's home again, pursuant to a search warrant. During the search, officers found 120.6 grams of methamphetamine, 70.1 grams of processed marijuana, 24 hydrocodone pills, scales, paraphernalia, and \$4,637.50. Defendant was arrested and read her *Miranda* rights. She denied possessing or selling methamphetamine, but admitted she had used it the day before. During the booking process at the jail, officers found 67.6 grams of methamphetamine in her pants and what they believed to be loose methamphetamine in her vagina. They transported her to a local hospital, where a medical exam uncovered a ruptured bag containing 47.4 grams of methamphetamine in defendant's vagina.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*).

² Undesignated statutory references are to the Health and Safety Code.

She was subsequently charged, in case No. 13F5812, with possession for sale of a controlled substance--methamphetamine (§ 11378; count 1); sale or transportation of a controlled substance--hydrocodone (§ 11352, subd. (a); count 2); maintaining a place for selling or using a controlled substance (§ 11366; count 3); possession for sale of marijuana (§ 11359; count 4); and destruction of evidence (Pen. Code, § 135; count 5). She was alleged to have committed these crimes while on bail in case No. 13F4136 (Pen. Code, § 12022.1) and was alleged to have three prior narcotics convictions (§ 11370.2, subd. (c)).

Defendant pleaded no contest to both counts of possession for sale of a controlled substance--methamphetamine, a single count of maintaining a place for selling or using a controlled substance (case No. 13F4136), and destruction of evidence, and admitted two prior narcotics conviction enhancement allegations (case No. 13F4136) in exchange for a sentence of six years four months in state prison and a dismissal of all other charges. The plea agreement further provided that if defendant appeared for sentencing as scheduled, her plea to one of the enhancement allegations would be withdrawn and the enhancement dismissed. If she failed to appear, she could be sentenced for a term up to nine years four months.

At the sentencing hearing, defendant's counsel informed the court defendant wished to withdraw her plea. Defendant also informed the court she wanted new counsel to be appointed. The court held a *Marsden*³ hearing pursuant to *People v. Eastman* (2007) 146 Cal.App.4th 688 and appointed new counsel for defendant. Defendant's newly appointed counsel informed the court he had discerned the main concern defendant had relative to her plea bargain was a miscommunication with her prior attorney about whether a state prison sentence was implicated. Counsel had reviewed the plea form and

³ *People v. Marsden* (1970) 2 Cal.3d 118.

the hearing transcript, and had spoken with prior counsel. He did not believe there were grounds to pursue a motion to withdraw defendant's plea.

Defendant was sentenced to an aggregate term of six years four months as follows: as to case No. 13F4136, two years for possession of a controlled substance plus three years for a single prior narcotics conviction, and a consecutive eight months for keeping a place for the sale of a controlled substance; as to case No. 13F5812, a consecutive eight months for possession of a controlled substance, and a concurrent 180 days for destruction of evidence. The court also awarded 64 days of presentence credit -- 32 days of actual custody and 32 days of conduct credit. The court imposed a restitution fine of \$7,000, imposed and suspended a matching parole revocation fine, and ordered defendant to pay a court operations assessment of \$160, a criminal conviction assessment of \$120, and a criminal laboratory analysis fee of \$195.

Defendant appeals without a certificate of probable cause "based on the sentence or other matters occurring after the plea that do not affect the validity of the plea."

II

Appointed counsel filed an opening brief that sets forth the facts of the case and asked this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

However, we note the trial court imposed only one criminal laboratory analysis fee. Defendant was ordered to "pay the Criminal Laboratory Analysis Fee of \$195.00 as follows: \$50.00 pursuant to Section 11372.5 of the Health and Safety Code, \$50.00 pursuant to Section 1464 of the Penal Code, \$10.00 pursuant to Section 1465.7 of the Penal Code, \$5.00 pursuant to Section 76104.6 of the Government Code, \$20.00 pursuant

to Section 76104.7 of the Government Code, \$25.00 pursuant to Section 70372[, subdivision] (a)(1) of the Government Code and \$35.00 pursuant to Section 76000[, subdivision] (a)(1) of the Government Code.” The court ought to have imposed two \$50 criminal laboratory analysis fees pursuant to section 11372.5, subdivision (a), one for each separate violation of section 11378. (See *People v. Sharret* (2011) 191 Cal.App.4th 859, 863-864 [finding a separate fee must be imposed for each qualifying violation].) Therefore, the cumulative criminal laboratory analysis fee is \$100 rather than \$50, which doubles the penalty assessments mandated by Penal Code sections 1464 and 1465.7, and Government Code sections 76104.6, 76104.7, 70372, subdivision (a)(1) and 76000, subdivision (a)(1). Accordingly, the total amount of the criminal laboratory analysis fee and the penalty assessments thereon should have been imposed in the amount of \$390 rather than \$195.

We also note the abstract of judgment alternately reflects that the time imposed for the section 11370.2, subdivision (c) enhancement is two years and three years. This should be corrected to reflect a three-year term is imposed for the enhancement.

DISPOSITION

The judgment is modified to increase the criminal laboratory analysis fee to \$100, and accordingly, to increase the section 11372.5 assessment to \$100, the Penal Code section 1464 assessment to \$100, the Penal Code section 1465.7 assessment to \$20, the Government Code section 76104.6 assessment to \$10, the Government Code section 76104.7 assessment to \$40, the Government Code section 70372, subdivision (a)(1) assessment to \$50, and the Government Code section 76000, subdivision (a)(1) assessment to \$70. As modified, the judgment is affirmed.

The clerk of the trial court is directed to prepare an amended abstract of judgment reflecting the increased criminal laboratory analysis fee and related assessments, as described herein, and to correct the abstract relative to the sentence imposed for the prior narcotics conviction enhancement from two to three years. The clerk is further directed

to provide a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

BLEASE _____, Acting P. J.

We concur:

HULL _____, J.

BUTZ _____, J.