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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ANTHONY PIPER,

Defendant and Appellant.

C078545

(Super. Ct. No. CRF131121)

In April 2013, defendant pled no contest to a single felony count of transporting methamphetamine. (Health & Saf. Code,<sup>1</sup> § 11379, subd. (a).) On appeal, he contends his conviction should be vacated based upon recent amendments to sections 11377 and 11379. The People argue defendant's conviction should be reversed and he should be

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<sup>1</sup> Undesignated statutory references are to the Health and Safety Code.

permitted to withdraw his plea. We shall reverse the order denying his motion to vacate his conviction and remand for further proceedings.

#### FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2013, defendant was detained while driving his car. A search of the vehicle revealed three bags of methamphetamine weighing approximately 2.7 grams.

Pursuant to the terms of defendant's plea agreement, the trial court suspended imposition of sentence and placed defendant on three years' Proposition 36 probation (Pen. Code, § 1210.1, subd. (a)), and dismissed other charged counts and some prior prison term allegations, and ordered defendant to pay various fines and fees.

In December 2014, defendant moved to vacate his conviction, arguing section 11379 had been amended and transportation of a controlled substance was no longer a felony unless the transport was for sale. Because there was no evidence his transportation of the methamphetamine was for sale, defendant argued the trial court should vacate his felony conviction and instead impose a misdemeanor sentence for simple possession. (See § 11377, subd. (a).) The trial court denied the motion.

#### DISCUSSION

When defendant entered his plea, section 11379, subdivision (a) provided, "every person who *transports* . . . any controlled substance . . . shall be punished . . . for a period of two, three, or four years." (Italics added.) Given this language, the courts had interpreted "transport" in section 11379 to mean any movement of the drug, even for one's personal use. (See, e.g., *People v. Rogers* (1971) 5 Cal.3d 129, 134.) But, effective January 1, 2014, the Legislature added an additional element to the offense, requiring transportation be for the purpose of sale. (§ 11379, subd. (c), as amended by Stats. 2013, ch. 504, § 2.)

The factual basis for defendant's plea did not establish whether defendant was transporting the methamphetamine for *sale*. Accordingly, the amendment at issue benefits defendant by imposing an unestablished element of the charged offense. Absent

