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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DAVID ANTHONY FISCHER, Defendant and Appellant.	E054106 (Super.Ct.No. RIF1103489) OPINION

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhart, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Kathleen Woods Novoa, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Lilia E. Garcia, Deputy Attorneys General, for Plaintiff and Respondent.

At defendant David Anthony Fischer's arraignment, he pled guilty to two drug charges and a Vehicle Code violation. He received a 90-day sentence to be served on weekends. Defendant appeals his conviction, arguing there is no factual basis for his guilty plea. As discussed *post*, we conclude that defendant's answers to the trial court's inquiry and the felony complaint in this record supply a sufficient factual basis to uphold the judgment of conviction.

FACTS AND PROCEDURE

Defendant was arrested on July 14, 2011. On July 18, 2011, the People filed a felony complaint charging defendant in count 1 with felony possession of methamphetamine (Health & Saf. Code, § 11377), in count 2 with misdemeanor possession of drug paraphernalia (Health & Saf. Code, § 11364), and in count 3 with misdemeanor driving a motor vehicle without a valid driver's license (Veh. Code, § 12500, subd. (a).) On that same date, defendant pled guilty to each of the charges in exchange for a 90-day county jail sentence to be served on weekends, with credit for five actual days for time served, plus two days credit under Penal Code section 4019. This appeal followed.

DISCUSSION

Defendant argues his conviction should be reversed because the trial court violated Penal Code section 1192.5 (§ 1192.5) by failing to require a factual basis for his plea in the record.

"Section 1192.5 provides that for a conditional plea of guilty or no contest, the trial court is required to 'cause an inquiry to be made of the defendant to satisfy itself that

the plea is freely and voluntarily made, and that there is a factual basis for the plea.' While there is no federal constitutional requirement for this factual basis inquiry, the statutory mandate of section 1192.5 helps ensure that the 'constitutional standards of voluntariness and intelligence are met.' [Citation.]" (*People v. Holmes* (2004) 32 Cal.4th 432, 438, fn. omitted (*Holmes*).)

"[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court's acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion. [Citation.] A finding of error under this standard will qualify as harmless where the contents of the record support a finding of a factual basis for the conditional plea. [Citations.]" (*Holmes*, *supra*, 32 Cal.4th at p. 443, citing *People v. Watts* (1977) 67 Cal.App.3d 173, 182.)

In *Holmes*, the defendant entered a plea of guilty to count 1 in the complaint filed against him, in exchange for the dismissal of another count. When ascertaining whether there was a factual basis for the plea, the court asked the defendant, " 'Did you do what it says you did in Count 1 on March 24th, 2000 in Riverside County?' " (*Holmes*, *supra*, 32 Cal.4th at p. 437.) The defendant answered in the affirmative, and the court found that there was a factual basis for the plea. (*Ibid*.)

On appeal, the defendant in *Holmes* argued that the trial court failed to establish a sufficient factual basis for his plea in accordance with section 1192.5. (*Holmes*, *supra*, 32 Cal.4th at p. 438.) This court affirmed, finding that the trial court had fulfilled its duty by its inquiry. (*Ibid*.) The California Supreme Court agreed, noting that count 1 of the

complaint to which the trial court referred "contained the charged offense, the names of defendant and the victim, the date and location of the charged offense, and a brief description of the factual basis for the charged offense." (*Id*. at p. 443.) The Supreme Court found that the complaint provided a sufficiently precise factual account of the charged offense, and that "the trial court's questioning of defendant about the factual basis in the complaint was adequate to establish that defendant was cognizant that his acts did constitute the offense with which he was charged . . . . [Citation.]" (*Ibid.*)

In the instant case, the record demonstrates that an on-the-record inquiry as to the factual basis for each of the charges was made by the trial court prior to accepting defendant's guilty plea. After determining that defendant understood his rights and knowingly waived them, the trial court engaged in the following back-and-forth with defendant:

"[THE COURT:] Regarding the charge, then, the 11377, which alleges that you were in possession of methamphetamine on or about July 14th of this year, are you pleading guilty or not guilty?

"[DEFENDANT:] Yes, sir. Guilty.

"[THE COURT:] It's also alleged as to Count 2 that you were in possession of drug-related paraphernalia in violation of Section 11364 on that same date. Guilty or not guilty?

"[DEFENDANT:] Guilty, sir.

"[THE COURT:] It is also alleged that you were driving a motor vehicle without having a valid license on that same day. Are you pleading guilty or not guilty to that charge?

"[DEFENDANT:] Guilty, sir."

Based on the foregoing, we conclude that the trial court established a sufficient factual basis for the plea, especially because the charges were self-explanatory, without need for additional facts to clarify that defendant knew that his acts constituted "the offense[s] with which he was charged." (*Holmes*, *supra*, 32 Cal.4th at p. 443.) That is, defendant admitted that he possessed methamphetamine and drug paraphernalia, and that he drove a motor vehicle without a license. These admissions adequately embraced both a summary of the charges, and a sufficient factual description of his actions that led to the charges being filed.

Assuming arguendo that the trial court's on-the-record inquiry was insufficient under *Holmes*, any error was harmless. This record contains the felony complaint, which itself contains a sufficient factual basis for the guilty plea. The complaint contains the charged offenses, the name of defendant, the date and location of the charged offenses, and a brief description of the factual basis for the charged offenses. This also is a sufficient factual basis for defendant's guilty plea.

DISPOSITION

The judgment of conviction is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.