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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.

LAWRENCE JAMES PERRY, JR.,

Defendant and Appellant.

E055361

(Super.Ct.No. RIF1105487)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed as modified.

Mark Yanis, 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, and James D. Dutton and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Pursuant to a plea agreement, defendant and appellant, Lawrence James Perry, Jr., pled guilty to four felony counts and one misdemeanor count arising from his theft of a credit card and his attempts to use that credit card. He also admitted six prior prison allegations. He was thereafter sentenced to an aggregate prison term of four years.

On appeal, he contends his plea bargain was conditioned upon a stay, pursuant to Penal Code section 654,¹ of the sentence on one count and that the court erred by failing to order the stay. We agree and will modify the judgment to reflect the stay.

II. FACTUAL AND PROCEDURAL SUMMARY

Defendant was charged with: obtaining identifying information of another person and using that information for an unlawful purpose (count 1), two counts of burglary (counts 2 & 3), misdemeanor petty theft (count 4), and committing the petty theft alleged in count 4 when he had been previously convicted of certain prior offenses (count 5). The complaint also included six prior prison term allegations under section 667.5, subdivision (b).

In a written plea agreement, defendant agreed to plead guilty to each of the five counts and admit each of the prior prison allegations. In the agreement, defendant states that his guilty pleas are conditioned upon certain sentencing considerations. Among these are the following “custody term[s]” handwritten into the form of agreement: “Ct. 1: 3 years (UT); concurrent Ct. 2: 3 years (UT) + Ct. 3: 3 years (UT); Ct. 4: 1 year jail; Ct.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

5[:] (§ 654).”² This is followed by additional handwriting indicating “+ One prison prior (2009)” and “= 4 years.” The focus in this appeal is on the reference to “§ 654” that follows “Ct. 5.”

At the sentencing hearing, the court imposed sentence as follows: on count 1, the upper term of three years; on each of counts 2 and 3, the upper term of three years; on count 4, 180 days; on count 5, the upper term of three years; and one-year sentences for each of the prison priors. The terms on counts 2 through 5 are to run concurrent to the three-year sentence on count 1. One of the prison prior terms is to run consecutively, the others concurrently. The aggregate term is four years. The court granted defendant 50 percent credit, resulting in a total time served of two years, and ordered the time be served in county jail pursuant to section 1170, subdivision (h). Defendant did not object to the sentence at the sentencing hearing.

III. DISCUSSION

Defendant contends the plea agreement was conditioned upon the staying of the sentence on count 5 pursuant to section 654, and that the court erred by failing to order such stay. We agree.

Initially, we consider the Attorney General’s argument that defendant’s failure to object at the sentencing hearing below forfeits the claim on appeal. Although the failure

² We have placed a colon (:) in brackets following “Ct. 5.” The parties disagree as to the nature of the actual, ambiguous mark. Defendant interprets it as a comma; the Attorney General describes it as a “shorthand sign for ‘and.’” In light of the marks following the other references to the charged counts, we construe it as a colon.

to challenge an erroneous ruling in the trial court generally forfeits the right to raise the issue on appeal, a reviewing court has discretion to consider the issue to the extent it presents a pure question of law or involves undisputed facts. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7.) This is such a case; the facts are not in dispute and the interpretation of the plea agreement is a question of law. We therefore exercise our discretion to address the merits of defendant’s claim.

A plea bargain is “an essential and desirable component of the administration of justice.” (*People v. Mancheno* (1982) 32 Cal.3d 855, 860.) The integrity of the plea bargain process is “maintained by insuring that the state keep its word when it offers inducements in exchange for a plea of guilty.” (*Ibid.*) A “violation of the bargain by an officer of the state raises a constitutional right to some remedy.” (*Ibid.*) Depending upon the facts of the particular case, specific performance may be an appropriate remedy. (*Id.* at pp. 860-861.)

“A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] ‘The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.]’” (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) “[C]ourts should look first to the specific language of the agreement to ascertain the expressed intent of the parties. [Citations.] Beyond that, the courts should seek to carry out the parties’ reasonable expectations.” (*People v. Nguyen* (1993) 13 Cal.App.4th 114, 120, fn. omitted.)

Here, both sides agree that the handwritten “§ 654” is a reference to section 654, which precludes multiple punishment when a criminal act or course of conduct violates two or more criminal statutes. (See *People v. Hester* (2000) 22 Cal.4th 290, 294.) When the statute applies to two convictions, execution of the sentence for one of the offenses must be stayed. (*People v. Mesa* (2012) 54 Cal.4th 191, 195.) The placement of “§ 654” immediately after “Ct. 5” indicates that the parties intended that the sentence imposed for count 5 be stayed pursuant to section 654. Thus, although the plea agreement did not specify a sentence for count 5, it is clear that the parties intended that whatever sentence the court imposed as to that count, the execution of that sentence was to be stayed pursuant to section 654. The court erred in failing to so order.

Defendant asserts that he “is entitled to choose whether to take the benefit of the agreed-upon terms of his plea bargain, or to withdraw his plea.” We disagree.

In *People v. Mancheno, supra*, 32 Cal.3d 855, the Supreme Court explained: “The usual remedies for violation of a plea bargain are to allow defendant to withdraw the plea and go to trial on the original charges, or to specifically enforce the plea bargain. Courts find withdrawal of the plea to be the appropriate remedy when specifically enforcing the bargain would have limited the judge’s sentencing discretion in light of the development of additional information or changed circumstances between acceptance of the plea and sentencing. Specific enforcement is appropriate when it will implement the reasonable expectations of the parties without binding the trial judge to a disposition that he or she considers unsuitable under all the circumstances. [¶] ‘ . . . When the breach [of the plea

bargain] is a refusal by the court to sentence in accord with the agreed upon recommendation, specific enforcement would entail an order directing the judge to resentence the defendant in accord with the agreement. The People as well as a defendant may seek such specific enforcements. The effect is to limit the remedy to an order directing fulfillment of the bargain. In such instances, the defendant is not allowed to withdraw his guilty plea.’ [Citation.]” (*Id.* at pp. 860-861.)

Here, the appropriate remedy is specific enforcement. First, a stay of the sentence on count 5 pursuant to section 654 will implement the reasonable expectations of the parties. Second, because the modification will involve changing a sentence that was to run concurrent with another term to a sentence that is stayed, the total term of incarceration will not change; thus, the trial judge will not be bound to a disposition she would find unsuitable. Accordingly, we will modify the sentence to reflect a stay of the sentence on count 5 and affirm the judgment as modified.

IV. DISPOSITION

The judgment is modified such that the sentence on count 5 is stayed pursuant to section 654. As modified, the judgment is affirmed. The trial court is directed to prepare a minute order and an amended abstract of judgment to reflect the modification of the sentence and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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KING
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.