

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL VERDUZCO,

Defendant and Appellant.

B184336

(Los Angeles County  
Super. Ct. No. KA069032)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.  
Abraham Khan, Judge. Affirmed with modifications.

David L. Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

---

Defendant and appellant Joel Verduzco appeals from the judgment entered following a jury trial that resulted in his conviction of various drug-related offenses, possession of a firearm by a felon and conspiracy to commit possession for sale of a controlled substance. He contends the sentence imposed violated Penal Code section 654 (§ 654) and *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*). We modify the sentence and affirm as modified.

## FACTUAL AND PROCEDURAL BACKGROUND

Resolution of the issues presented does not require a detailed recitation of the facts. In summary and viewed in accordance with the usual rules on appeal (*People v. Kraft* (2000) 23 Cal.4th 978, 1053), the evidence adduced at trial established that a police officer searching defendant's hotel room recovered a total of 1.95 grams of tar heroin and 4.42 grams of cocaine, as well as a loaded pistol, several thousand dollars in cash, two digital scales, a "pay/owe" sheet, and various packaging materials. Defendant and the woman who was also present in the room at the time of the search were both arrested.

Defendant was charged with two counts of possession of controlled substances for sale (Health & Saf. Code, § 11351)<sup>1</sup>; two counts of possession of a controlled substance while armed with a handgun (§ 11370.1, subd. (a)); possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)); and conspiracy to sell a controlled substance (§ 11352, subd. (a)). Enhancements for gun use (Pen. Code, § 12022, subds. (a)(1) and (c)) and prior convictions were also alleged. A jury convicted defendant as charged and found true the gun use enhancements. In a bifurcated proceeding, the trial court found true the prior convictions.

At defendant's sentencing hearing, the trial court identified the following aggravating circumstances pursuant to California Rules of Court, rule 4.421:  
(1) defendant was armed with a weapon during the commission of the crime

---

<sup>1</sup> All further undesignated statutory references are to the Health and Safety Code.

(rule 4.421(a)(2));<sup>2</sup> (2) the manner in which the crimes were carried out indicated planning, sophistication or professionalism (rule 4.421(a)(8)); (3) the crime involved a large quantity of contraband (rule 4.421(a)(10)); (4) the defendant's prior convictions as an adult are numerous or of increasing seriousness (rule 4.421(b)(2)); (5) the defendant has served a prior prison term (rule 4.421(b)(3)); and (6) defendant's prior performance on probation or parole was unsatisfactory (rule 4.421(b)(5)). With regard to consecutive or concurrent sentences, the trial court identified the following relevant circumstances pursuant to California Rules of Court, rule 4.425: (1) defendant's unsatisfactory performance on parole (rule 4.421(b)(5)) and (2) the number and increasing seriousness of defendant's adult convictions (rule 4.421(b)(2)). The trial court found no factors in mitigation.<sup>3</sup> The court sentenced defendant to 13 years in prison comprised of a total of 12 years for possession of heroin (the upper term of 4 years for possession of heroin for sale, plus a consecutive 5 year upper term for a firearm enhancement, plus a consecutive 3 years for a previous sale of narcotics enhancement) (count 1); plus a consecutive 1 year (one-third the three year mid-term) for possession of cocaine (count 2); plus a concurrent 2 year mid-term for being a felon in possession of a firearm (count 5). Sentences were imposed on the remaining counts but stayed pursuant to section 654.

## DISCUSSION

### A. *Section 654*

As we understand defendant's contention, pursuant to section 654, the judgment should be modified to reflect a stay of the concurrent two-year term imposed on count 5 (felon in possession of a firearm) because it punishes the same conduct as the five-year

---

<sup>2</sup> The trial court noted that it would not consider this as an aggravating circumstance since being armed was an element of some of the offenses.

<sup>3</sup> In response to defense counsel's request that the trial court consider defendant's drug dependency as a circumstance in mitigation, the trial court noted that it did not overcome the aggravating circumstances.

sentence imposed on count 1 for the firearm enhancement (Pen. Code, § 12022, subd. (c)). We agree.

Subdivision (a) of section 654 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.” Under section 654, a defendant may not receive multiple sentences where a single criminal act results in violation of more than one criminal statute, where the defendant harbored a single intent and objective. (*People v. Chaffer* (2003) 111 Cal.App.4th 1037, 1044.)

Whether the defendant harbored a single intent and objective is a factual question and, in order for multiple punishments to be allowed, there must be substantial evidence to support a finding, explicit or implicit, that the defendant formed a separate intent and objective for each offense for which he was sentenced. (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) As with other factual questions, we review the trial court's determination of this issue “in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143 (*Jones*).

In *Jones, supra*, 103 Cal.App.4th at p. 1145, the court ruled that, in determining whether section 654 proscribes multiple punishment for violation of section 12021 (felon in possession of a firearm) and shooting at an inhabited dwelling, “section 654 is inapplicable when the evidence shows that the defendant arrived at the scene of his or her primary crime already in possession of the firearm.”

Whether section 654 applies to enhancements based on conduct (such as carrying a firearm) remains an open question. (*People v. Coronado* (1995) 12 Cal.4th 145, 157 (*Coronado*)). The Supreme Court has granted review of *People v. Manila* (2006), previously published at 139 Cal.App.4th 589, and *People v. Palacios* (2005), previously published at 126 Cal.App.4th 428, both of which held section 654 applicable to firearm enhancements. We agree with those courts and find section 654 applies to firearm enhancements.

Here, implicit in the trial court's decision to impose a concurrent sentence on count 5, rather than stay it, is a finding that defendant's being a felon in possession of a firearm and being personally armed with a firearm while possessing for sale a controlled substance either constituted more than one criminal act or that defendant entertained more than one criminal objective. Under *Jones, supra*, 103 Cal.App.4th at p. 1145, neither finding is supported by the evidence. There was no evidence that defendant arrived at the hotel with the gun. Thus, the only evidence was that defendant simultaneously possessed, at least constructively, the gun and the heroin while he was in the hotel room.<sup>4</sup> This evidence was insufficient to support the court's implied finding of more than one criminal act or objective on defendant's part.

Because defendant was sentenced twice for the single act of possessing a firearm, his sentence for possession of a firearm by a felon (the offense providing for a shorter potential term of imprisonment) must be stayed pursuant to section 654.

B. *Blakely Error*

Defendant contends the upper term and consecutive sentencing imposed in this case violated his Sixth and Fourteenth Amendment rights under *Blakely* because the jury did not find the facts used to justify the upper term. But in *People v. Black* (2005) 35 Cal.4th 1238, our Supreme Court held that *Blakely* did not apply to California's sentencing scheme. Accordingly, this contention must fail.

---

<sup>4</sup> The People argue that a separate intent and objective can be inferred from the evidence of the woman arrested with defendant, who testified that she bought the gun the night before with the intention of reselling it but did not tell defendant about it. From this evidence, the People argue, the trier of fact could infer that defendant and the woman bought the gun together and shared the intention to sell it. We find such an inference too speculative under the circumstances.

## **DISPOSITION**

The judgment is modified to stay the sentence on defendant's conviction for possession of a firearm by a felon (count 5). The trial court is directed to amend the abstract of judgment accordingly and forward the amended abstract to the Department of Corrections. We affirm the judgment in all other respects.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

RUBIN, J.

We concur:

COOPER, P. J.

BOLAND, J.