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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. CYNTHIA SOPHIA MACIAS, Defendant and Appellant.	D054665 (Super. Ct. No. SCS208344, SCD211072, SCD214238)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Bashant, Judge. Affirmed.

Cynthia Macias appeals from a judgment convicting her of various offenses arising from three incidents during which she transported and possessed drugs, evaded the police while driving recklessly, and provided a false name to the police. She contends the trial court erred in denying two suppression motions, in imposing two on-bail enhancements, and in failing to consider a commitment to the California Rehabilitation Center. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

February 6, 2007 Incident

At about 1:40 a.m. on February 6, 2007, the police stopped a truck because the ball of a trailer hitch obscured one of the numbers on the truck's license plate. Macias was driving and was accompanied by three passengers. During the stop Macias sped away, and then led the police on a high-speed chase from Chula Vista to La Jolla.

Macias was apprehended in La Jolla when she fled the truck on foot. When searching the truck, the police found three baggies and a make-up compact containing methamphetamine, a methamphetamine pipe with methamphetamine in it, two digital scales, and shotgun shells.

For this incident, Macias was convicted of methamphetamine transportation, evading an officer with reckless driving, methamphetamine possession, and misdemeanor resisting an officer.[1]

January 3, 2008 Incident

While released on bail for the February 6, 2007 incident, Macias committed additional offenses on January 3, 2008. During police surveillance of an apartment for suspected narcotics activity, the police saw Macias enter the apartment, leave about 10 minutes later, and drive away. The police stopped her about two blocks away, and during a search of the car found methamphetamine, a scale, and two syringes. The jury

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[1] The jury found Macias not guilty of possession of methamphetamine for sale. The trial court dismissed charges of possession of ammunition and possession of narcotics paraphernalia for lack of evidence.

convicted her of methamphetamine transportation, methamphetamine possession (as a lesser offense of methamphetamine possession for sale), and misdemeanor possession of a hypodermic syringe. The jury also found true an on-bail enhancement based on her commission of a felony while released on bail for the February 2007 incident.

June 12, 2008 Incident

While released on bail for the February 2007 and January 2008 incidents, Macias again reoffended on June 12, 2008. During the investigation of a burglary of a vehicle at a hotel, the police detained Macias and another woman for questioning. Macias and her companion provided false names to the police. During a search of the vehicle Macias had driven to the hotel, the police found a baggie of methamphetamine, two baggies of heroin, a gun, and syringes.

The jury convicted Macias of methamphetamine transportation, heroin possession, and the misdemeanor offenses possession of a syringe, resisting an officer, and providing a false identity to an officer. The jury found true two on-bail enhancements based on her commission of the offenses while released on bail for the February 2007 and January 2008 incidents.[2]

Sentence

The trial court sentenced Macias to 11 years four months in prison.

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2 The trial court dismissed gun possession charges for lack of evidence.

DISCUSSION

I. *Timeliness of the Appeal*

The Attorney General asserts Macias's appeal is untimely because it was filed on February 24, 2009, which is more than 60 days after the December 17, 2008 judgment sentencing Macias to prison.[3] (Cal. Rules of Court,[4] rule 8.308(a) [appeal must be filed within 60 days after rendition of judgment].) The contention fails under the rule that deems an appeal timely when it is timely mailed from a custodial institution. (Rule 8.308(e);[5] see *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 110.) The last day for filing the appeal was February 17, 2009. The clerk's file contains a copy of Macias's envelope enclosing the notice of appeal which was stamped as mailed from prison on January 28, 2009. The January 28, 2009 mailing from the prison was within the 60-day period; hence the appeal is deemed timely.

II. *Motion to Suppress Items Found in Car Parked at Hotel*

Macias contends the court erred in denying her motion to suppress the items found during the warrantless search of the car at the hotel on June 12, 2008.

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3 Macias was first sentenced on December 16, but the sentence was amended on December 17.

4 Subsequent references to rules are to the California Rules of Court.

5 Rule 8.308(e) states: "If the superior court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (a) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (a), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received."

A. *Background*

At the suppression hearing, several police officers testified to describe the events leading to the search of the car at the hotel. At about 8:00 a.m. on June 12, 2008, the police received a report that a car parked at the hotel had been burglarized. The victim told the police that three suitcases and a box had been taken from her car, and stated there were numerous items of clothing in the suitcases. Surveillance videos revealed a truck arriving in the early morning hours and parking next to the victim's car, and two men taking items from the victim's car and placing them in the truck. The videos also showed two women who were with the men at the hotel, although the women were not seen committing the burglary. The hotel managers gave the police a cell phone that had been left in the room where the suspected burglars had stayed. While the police were still at the hotel, two women (later identified as Macias and Teresa Tenorio) arrived at the hotel in a Ford Focus vehicle. Macias and Tenorio were looking for a cell phone, and they identified the cell phone found in the room used by the suspects as their cell phone.

The police detained Macias and Tenorio for questioning about the vehicle burglary. The two women sat, unhandcuffed, on stairs in front of the hotel. When the police asked the two women to identify themselves, they were initially "very evasive" but ultimately provided names; Macias stated her name was Elvia Scott and Tenorio stated her name was Teresa Sanchez. The women told the police they did not have any identification on them nor inside the Ford Focus. The police ran a check on these names and found no criminal history associated with them. The officers suspected the women were not providing their true names. They both appeared to be drug users which made it

unlikely their records would be completely clean. Macias appeared to be under the influence and bore indicia of a drug user. She had "pockmarks" on her face typical of a methamphetamine user; she was pale, gaunt, and extremely disheveled; she answered questions in an erratic manner; and she was acting "very hyper." Macias told the police that she used methamphetamine. Macias's claim that she was Scott was also contradicted by Scott's age. The police determined that Scott was 46 years old, and Macias (later determined to be age 26) did not appear that old.

Suspecting that the women were lying about their identity, the police separated them to question them individually. The police placed Macias in the back seat of a police vehicle without handcuffs, and Tenorio stayed on the stairs. Although the police had not yet formally arrested Macias, they believed they had probable cause to do so for providing a false identity to an officer and for being under the influence of a controlled substance. They planned to take Macias and Tenorio to the police station to identify them through fingerprints. During the questioning Tenorio eventually disclosed her true name, and a records check revealed that she was on active parole and had a Fourth Amendment waiver.

Macias told the police that she was the registered owner of the Ford Focus and that she had driven the car to the hotel. Tenorio stated she was a passenger in the vehicle. The police ascertained that the Ford Focus was registered to Elvia Scott (the name given by Macias). Because the police suspected Macias was not Scott, they thought the Ford Focus might be stolen. The Ford Focus was parked illegally in the hotel's parking lot; it was parked horizontally rather than diagonally in the parking space and spanned part of

the sidewalk. When the police looked into the Ford Focus from the outside of the vehicle (before searching it), they saw a large number of items in the back seat as if "somebody was moving," including luggage and backpacks. The police thought the items in the Ford Focus might be related to the burglary.[6]

The police asked Macias for permission to search the Ford Focus but she declined to provide it. The police decided they could legally search the car without Macias's permission, and obtained the keys from her. The officers believed the search was permissible because they thought Macias was lying about her identity and the car might contain identification information; the car might contain evidence related to the burglary; and Tenorio was on parole with a Fourth Amendment waiver permitting a search of areas within a "short arms reach" of the passenger seat. Both Macias and Tenorio told the police there were items in the car that belonged to them.

One of the officers searched the driver's side of the Ford Focus, and another officer searched the passenger's side and the hatchback/trunk area. When they opened the passenger's side door, the police saw a gun visible in the pocket of the door. Upon the discovery of the gun, the police handcuffed Macias and Tenorio. Having found this weapon, the police thought there might be other weapons or ammunition in the car. The police looked inside a "large purse bag" that was sitting on top of the center console

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6 The police did not think they had probable cause to arrest Macias for possession of stolen property because they did not know if the items in the Ford Focus belonged to the victim. By the time Macias and Tenorio returned to the hotel, the victim had already left. Upon the search of the Ford Focus, the police assessed that (based on the victim's description of her property) the items in the Ford Focus were not the ones taken during the burglary.

between the passenger's and driver's seats and that could be reached by the passenger. The police did not know who owned the purse, and thought it could belong to either woman.

Inside the purse, the police found hypodermic syringes, a baggie of methamphetamine, and two baggies of heroin. The purse also contained a wallet with a prepaid legal services card that had no photograph but bore Macias's name.[7]

The police arrested Macias for providing a false identity to an officer. The police decided to impound the Ford Focus. When making this decision, they considered that the driver had been arrested; the car was not legally parked; they had not yet been able to obtain contact information for the registered owner; the hotel personnel did not want them to leave the car in the hotel's parking lot; and the street did not have available parking. The police towed the car and they performed an inventory search after the impound.

While Macias was being fingerprinted at the police station, the police obtained contact information for Scott. Scott told the police that she had allowed Macias to borrow her car.

Trial Court's Ruling

The prosecutor presented several grounds to justify the warrantless search of the Ford Focus, including (1) it was a lawful search incident to an arrest based on probable

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[7] During the search of the car the police found additional items (primarily in bags in the back passenger area), including a baggie of marijuana, another baggie of methamphetamine, more hypodermic syringes, and a large weighing scale. Macias was not charged with possession of these items.

cause to arrest Macias for being under the influence and providing a false identity to the police; (2) the officers had grounds to believe the car contained evidence related to the burglary; (3) Tenorio's parole status permitted a search of the areas of the car reachable from the passenger side, and the discovery of the gun in the passenger door permitted a full search of the car for other weapons; and (4) items would have been inevitably discovered based on the inventory search of the vehicle after impound.

Defense counsel argued the police did not have any basis to suspect that Macias was involved in the burglary and thus they had no justification for detaining her; there were no exigent circumstances requiring a warrantless search; Tenorio's Fourth Amendment waiver did not allow the police to search the entire vehicle; and an impound and inventory search would not have occurred if Macias had not been improperly detained.

The trial court denied the suppression motion, finding the search was justified as a search incident to an arrest and as a parole search. The court reasoned the police had the right to stop and question Macias based on a reasonable suspicion that she was connected to the people who had committed the burglary, and thus she was at least a witness to or perhaps involved in the crime. When the police questioned her and Tenorio about their identities, they were evasive and it was apparent that Macias was not in her 40's as the person whose name she claimed. This falsity increased the suspicion that she might be involved in the burglary, and created probable cause to arrest her for giving a false identity to the police. Once the police determined that Tenorio had a Fourth Amendment

waiver they could search property that they believed belonged to or was controlled by her.

B. *Analysis*

When reviewing a challenge to a suppression ruling, we defer to the trial court's factual findings if supported by substantial evidence, and exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Gallegos* (2002) 96 Cal.App.4th 612, 622.) We may affirm the trial court's ruling if it is correct on any theory of law applicable to the case, even if for reasons different than the trial court's reasons. (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.)

A few months after the trial court's denial of the suppression motion, the United States Supreme Court issued its decision in *Arizona v. Gant* (2009) 556 U.S. ___, 129 S.Ct. 1710, a case which clarified the standards applicable to warrantless searches of vehicles. Prior to *Gant*, many courts had interpreted a previous United States Supreme Court decision (*New York v. Belton* (1981) 453 U.S. 454) to mean that the police could properly conduct a vehicle search incident to the arrest of a recent occupant of the vehicle even if the arrestee was secured and could not gain access to the vehicle at the time of the search. (*Arizona v. Gant*, *supra*, at pp. 1718-1719.) The *Gant* court narrowed this interpretation of *Belton*, holding that a warrantless vehicle search incident to an arrest is permissible only when (1) the arrestee is unsecured and within reaching distance of the vehicle (thereby justifying the search to protect officer safety or prevent destruction of evidence), or (2) when it is reasonable to believe the vehicle might contain evidence of

the offense of arrest. (*Id*. at pp. 1714-1719.) Additionally, *Gant* reiterated other exceptions to the warrant requirement for vehicle searches which exist regardless of whether there is an arrest, including when there is probable cause to believe the vehicle contains evidence of criminal activity. (*Id*. at p. 1721.)

The incident-to-arrest exception to the warrant requirement which arises when there is a reasonable belief the vehicle contains evidence related to the offense of arrest is premised on the rationale that the police are not "rummaging" to conduct a general exploratory search. (*Thornton v. United States* (2004) 541 U.S. 615, 629-632 (conc. opn., Scalia, J.).) Rather, in this situation the police are engaging in an evidence-gathering function specifically tied to the arrestee, and in a context (a vehicle) involving a reduced expectation of privacy and a mobile instrumentality rather than a fixed premise. (*Ibid*.; see *Wyoming v. Houghton* (1999) 526 U.S. 295, 303-304.) When there is probable cause to arrest, the police do not need probable cause to search the vehicle, but only need a reasonable basis to believe the vehicle contains evidence relevant to the offense of arrest. (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1065.) In the context of an automobile search incident to arrest, the scope of the permissible search extends to the interior seating compartment of the car, including closed containers therein. (*Arizona v. Gant*, *supra*, 129 S.Ct. at pp. 1720-1721.)

Similarly, independent of an arrest, the reduced expectation of privacy and mobility associated with an automobile justifies an intrusion into a vehicle based on probable cause to believe the vehicle contains evidence of criminal activity. (See *United States v. Ross* (1982) 456 U.S. 798, 806-807; *Wyoming v. Houghton*, *supra*, 526 U.S. at

pp. 300-304.) When the police have probable cause to believe a vehicle contains evidence of a crime, the search may extend to any areas of the vehicle where the evidence might be found, including closed containers and the trunk. (See *United States v. Ross, supra*, 456 U.S. at pp. 817-825; *Arizona v. Gant, supra*, 129 S.Ct. at pp. 1720-1721; *People v. Hunter* (2005) 133 Cal.App.4th 371, 379-382.)

The rule permitting warrantless searches of vehicles for evidence-gathering purposes is not confined to situations when the police must act immediately. (*United States v. Ross, supra*, 456 U.S. at p. 807, fn. 9.) The United States Supreme Court has explained that when the police are authorized to *seize* a car without a warrant because of probable cause to believe it contains contraband, there is no need to require the police to perform the seizure and then secure a search warrant. (*Ibid*.) Rather, based on the existence of probable cause that the vehicle contains contraband, the police may properly search the vehicle at the scene. (*Ibid*.) *Ross* explains: "'For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment'. [Citation.] . . . . [¶] [This rule is] based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests. Given the scope of the initial intrusion caused by a seizure of an automobile—which would often leave the occupants stranded on the highway—[we] rejected an inflexible rule that would force police officers in every case either to post guard at the vehicle while a warrant is obtained

or to tow the vehicle itself to the station . . . . [I]f an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference." (*Ibid*.)

On appeal, Macias argues the vehicle search was precluded under the *Gant* rule prohibiting a vehicle search when an arrestee is secured and unable to reach the car. Because Macias had been placed in the patrol car at the time of the search and there were numerous officers at the scene, we agree the search cannot be justified based on her access to the car.[8] However, we conclude the search was permissible based on the evidence-gathering exceptions to the warrant requirement. The search was permissible because (1) there was probable cause to arrest Macias for providing a false name and a reasonable basis to believe the car contained evidence relevant to this offense, and/or (2) there was probable cause to believe the car contained evidence of the burglary.

Probable cause to arrest or search exists when the facts known to the officer would persuade a person of reasonable caution that the person to be arrested has committed a crime or that the area to be searched contains evidence of a crime. (*People v. Thompson* (2006) 38 Cal.4th 811, 818; *People v. Gallegos, supra*, 96 Cal.App.4th at p. 623.) Although a mere hunch does not suffice to show probable cause, the facts need not rise to the level of certainty; the test is whether there are specific and articulable facts that

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8 There were five officers at the scene at the time of the search. We note that at the time of the search Tenorio had not been placed in a patrol car, but was sitting, unhandcuffed, on the steps about 20 to 30 feet from the Ford Focus. Given our holding below that the search was a proper search for evidence of a crime, we need not evaluate whether the search was justified based on Tenorio's access to the car.

provide reasonable grounds for a belief of guilt or the presence of evidence. (*People v. Thompson, supra*, 38 Cal.4th at pp. 818, 820; *People v. Martin* (1973) 9 Cal.3d 687, 692; *People v. Gallegos, supra*, 96 Cal.App.4th at p. 623.)

Here, there were specific, articulable facts providing reasonable grounds to believe that Macias had lied to the police about her identity, and hence providing probable cause to arrest for this false identity offense. Macias was initially evasive when asked for her name; then she gave the name of a person who was about 20 years older than Macias appeared; and she claimed she had no identification on her or in the car that she had driven to the hotel. Given her provision of a patently false name to the officers and the fact that she had driven the car to the hotel, the officers had a reasonable justification to search the car for evidence of her true identity, such as a driver's license or other form of identification. (See *People v. Osborne, supra*, 175 Cal.App.4th at p. 1065 [probable cause to arrest for illegal firearm possession based on discovery of loaded firearm on defendant's person permitted search of vehicle based on reasonable basis to believe car contained more ammunition or holster].)[9]

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[9] We note further that the officers had probable cause to arrest Macias for being under the influence based on her appearance, behavior and admission that she used methamphetamine, which provided a reasonable basis to search the car for drugs. (See *Arizona v. Gant, supra*, 129 S.Ct at p. 1719; *Thornton v. United States, supra*, 541 U.S. at p. 632; see also *People v. Osborne, supra*, 175 Cal.App.4th at p. 1065.) Even though the officers did not elect to arrest Macias for being under the influence, the latter was still "a crime for which the officer had probable cause to arrest[,]" which permitted a vehicle search for evidence related to this offense. (*People v. Osborne, supra*, 175 Cal.App.4th at p. 1065; see *People v. Conway* (1994) 25 Cal.App.4th 385, 388-389; *People v. Adams* (1985) 175 Cal.App.3d 855, 861-863.)

Additionally, the officers were aware of specific, articulable facts that provided reasonable grounds to believe the Ford Focus contained items taken during the burglary.[10] The surveillance video revealed two women in the company of the suspected burglars; hotel personnel discovered a cell phone left in the room occupied by the burglary suspects; and Macias and her female companion returned to the hotel asking for the cell phone. Before the police searched the Ford Focus, they saw in plain view numerous items in the back seat, including luggage. Given that luggage was taken during the burglary and there were facts supporting that Macias had been in the company of the suspected burglars at or near the time of the crime, the police had reasonable grounds to believe that the Ford Focus contained items taken by the burglars. Hence, the search of the Ford Focus was proper based on probable cause to believe it contained evidence of the burglary.

Given our conclusion that the vehicle search was permissible under the standards set forth in *Gant*, we need not discuss the parties' dispute over whether reversal would not be warranted because the officers acted in good faith under pre-*Gant* standards. Further, based on our conclusion that the search was a permissible evidence-gathering search, we need not evaluate the parties' disputes over whether the search was permissible based on

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10 Assuming (as stated by one of the officers at the suppression hearing) that the police did not have probable cause to *arrest* Macias for possessing items stolen during the burglary, this does not necessarily indicate there was no probable cause to *search* for evidence of the burglary in the car. In some instances the facts may be specific enough to show probable cause to search, while not being specific enough to show probable cause to arrest until after the fruits of the search are obtained. (See, e.g., *People v. Hochstraser* (2009) 178 Cal.App.4th 883, 891-892, 902-903.)

Tenorio's parole status, or whether exclusion of evidence was not required based on inevitable discovery arising from an inventory search.

III. *Motion to Suppress Items Seized After Detention for Obstructed License Plate*

Macias asserts the trial court erred in denying her suppression motion based on her contention that the police unlawfully stopped her truck on February 6, 2007, due to an obstruction of one of the numbers on the license plate by a trailer hitch ball. In *People v. White*, the court interpreted Vehicle Code section 5201 to mean that even a partial obstruction of a license plate by a trailer hitch ball constituted a violation of that section. (*People v. White* (2001) 93 Cal.App.4th 1022, 1026.)[11] Macias asserts *White* was wrongly decided, and essentially raises this claim to preserve further review of the issue. We agree with the holding in *White*. Macias does not raise any challenges to the February 6 search and seizure apart from the lawfulness of the stop. Because the stop was lawful, the trial court did not err in denying the suppression motion.

IV. *Sentence*

Macias received an 11-year four-month prison sentence, consisting of the following terms. (1) Regarding the June 12, 2008 offenses: three-year (middle) term for methamphetamine transportation (count 11). Consecutive eight-month term for heroin possession (count 13). (2) Regarding the January 3, 2008 offenses: consecutive one-year term for methamphetamine transportation (count 8). (3) Regarding the February 6, 2007

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[11] Vehicle Section 5201 states: "License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible. . . ."

offenses: consecutive one-year term for methamphetamine transportation (count 1). Consecutive eight-month term for evading an officer (count 2). (4) One-year term for a prior prison enhancement, and four-year term for two on-bail enhancements.

Macias contends the court erred in (1) imposing two on-bail enhancements, and (2) failing to consider a commitment to the California Rehabilitation Center.

A. *Imposition of Two On-Bail Enhancements*

Citing *People v. Augborne* (2002) 104 Cal.App.4th 362, Macias asserts the trial court should have imposed only one on-bail enhancement (Pen. Code, § 12022.1, subd. (b)).[12] The *Augborne* court held that an on-bail enhancement relates to the nature of the offender, not the nature of the offense, and accordingly only one on-bail enhancement should be imposed under circumstances where the defendant was released on bail in *one* case when she committed new offenses. (*Augborne, supra*, 104 Cal.App.4th at pp. 376-377.) *Augborne*'s holding is inapplicable here. When Macias committed offenses during the last of the three distinct incidents (the June 12, 2008 offenses), she had been released on bail in *two* separate cases; i.e., her release after her arrest for the February 6, 2007 offenses, and her release after her arrest for the January 3, 2008 offenses. Given that Macias had two separate on-bail releases at the time of the new offenses on June 12, the

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12 Penal Code section 12022.1, subdivision (b) states: "Any person arrested for a secondary offense which was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years in state prison which shall be served consecutive to any other term imposed by the court."

trial court did not err in imposing two on-bail enhancements. (See *People v. Mackabee* (1989) 214 Cal.App.3d 1250, 1260-1262.)

B. *Failure to Consider California Rehabilitation Center Commitment*

Macias asserts the trial court erred in failing to consider a commitment to the California Rehabilitation Center (CRC) in lieu of prison because her offenses stemmed from her narcotics addiction.

The record shows that the probation officer, the parties, and the court all assumed Macias was ineligible for a CRC commitment. Because the court selected a sentence in excess of six years, their assumption was correct.

Welfare and Institutions Code section 3051 states: "Upon conviction of a defendant for a felony . . . *and upon imposition of sentence*, if it appears to the judge that the defendant may be addicted . . . to narcotics *the judge shall suspend the execution of the sentence* and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant's record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section." (Italics added.) Welfare and Institutions Code section 3052, subdivision (a) states: "*Section[ ] . . . 3051 shall not apply to* any of the following: [¶] . . . (2) *Persons whose . . . conviction results in a sentence which, in the aggregate, . . . exceeds six years' imprisonment* in state prison . . . ." (Italics added.)

The probation officer stated in her report that Macias was presumptively ineligible for probation, her case did not appear to be unusual so as to warrant probation, and she was not suitable for probation given her lengthy criminal history and failure to take responsibility for her conduct. The probation officer noted that Macias's drug abuse "has had an impact on her criminal behavior" and if Macias had "been eligible for consideration in the CRC program," the probation officer "would have been inclined to recommend CRC" rather than prison. The probation officer recommended a total sentence of 13 years four months.

At the sentencing hearing, defense counsel requested that the trial court either (1) grant probation with a one-year jail sentence and treatment at a residential program, or, alternatively (2) impose an 11-year sentence rather than the 13-year four-month sentence recommended by the probation officer. Defense counsel noted the probation officer's comment that she would have recommended CRC had that been an option; emphasized that Macias "desperately" needed drug rehabilitation and that her actions were essentially drug induced; and urged the court to find that this was an unusual case warranting probation, and if not, to impose an 11-year sentence.[13]

The prosecutor opposed a grant of probation and argued in support of the probation officer's recommended sentence. The prosecutor agreed that Macias clearly had a drug problem, but asserted that she had been given an opportunity in the past to

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[13] Regarding CRC, defense counsel also stated: "And I know during the course of negotiations with this case that was Ms. Macias's real desire and in fact prior to trial I actually was able to negotiate a six-year deal. However, the district attorney—we couldn't get her into C.R.C. which is the problem."

change her ways, she reoffended after being released from prison and being released on bail, she refused to accept responsibility for her conduct, and she had rejected the prosecution's plea bargain offers.

The trial court concluded that the case was not an unusual one warranting probation, finding that Macias had been a "one-woman crime wave" and she did not appear to be "completely accepting responsibility." The court stated that it hoped she could get drug treatment in prison because she "desperately" needed it, but probation was not appropriate "given the repeated offenses every time she was out on bail." The court concluded that consecutive sentences were warranted with respect to the three distinct incidents, the two distinct drugs (methamphetamine and heroin), and the transportation of drugs that involved reckless driving. The court stated that because the offenses all appeared to be drug related, it would select a middle term for the principal offense even though her criminal record could support an upper term. Accordingly, the court imposed an 11-year four-month sentence.[14]

Based on the court's imposition of a sentence in excess of six years, Macias was statutorily ineligible for CRC commitment. (Welf. & Inst. Code, § 3052, subd. (a)(2); see *People v. Krauss* (1984) 158 Cal.App.3d 274, 277-278.) Macias asserts the court could have selected a six-year sentence. Regardless, the court did not do so. The CRC

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[14] The court's sentence was two years less than the 13-year four-month sentence recommended by the probation officer because the court and parties agreed that the on-bail enhancements were status enhancements that should be added to the end of the sentence, and that the probation officer had erred in this regard and calculated three, rather than two, on-bail enhancements.

determination is made "upon imposition of sentence" and, if the defendant is eligible, the court "suspend[s] execution of the sentence." (Welf. & Inst. Code, § 3051.) Given the court's imposition of an 11-year four-month sentence, the court did not err in failing to consider a CRC commitment.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.