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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. PABLO JIMENEZ-JIMENEZ, Defendant and Appellant.	F036220 (Super. Ct. No. 79528A) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Kern County. Arthur E. Wallace, Judge.

William Davies, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Assistant Attorney General, Stephen G. Herndon and David Andrew Eldridge, Deputy Attorneys General, Plaintiff and Respondent.

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On June 22, 2000, pursuant to a plea agreement, appellant Pablo Jimenez-Jimenez pled no contest to the following charges: conspiracy to commit a felony (count 1; Pen. Code, § 182, subd. (a)(1)); possession of ephedrine or pseudoephedrine for methamphetamine manufacture (count 3; Health & Saf. Code,[1] § 11383, subd. (c)); cultivation, harvest, or process of marijuana (count 8; § 11358); and possession of a semiautomatic assault weapon (count 10; Pen. Code, § 12280, subd. (b).) As to count 1, it was alleged the conspiracy involved the manufacture of in excess of three pounds of methamphetamine (§ 11379.6, subd. (a)(2).)[2]

In exchange, under a Harvey Waiver,[3] the prosecution dismissed charges for manufacture of methamphetamine (count 2; § 11379.6); disposal of hazardous chemicals from methamphetamine manufacture (count 4; § 11374.5); storage without permit of hazardous waste (count 6; § 25189.5, subd. (d)); possession of marijuana for sale (count 9; § 11359); and, conspiracy to commit a felony (count 7; Pen. Code § 182, subd. (a)(1).) The plea agreement provided for a maximum sentence of 12 years, and the payment of fines.

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[1] All further statutory references are to the Health and Safety Code unless otherwise stated.

[2] Section 11379.8 relates to convictions on charges of conspiracy to manufacture controlled substances, and states in subdivision (a)(2) that "Where the substance exceeds 10 gallons of liquid by volume or three pounds of solid substance by weight, the person shall receive an additional term of five years." Section 11379.8, subd. (e) states, "The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was *substantially involved* in the direction or supervision of, or in a significant portion of the financing of, the underlying offense." (Italics added.)

[3] *People v. Harvey* (1979) 25 Cal.3d 754.

The trial court sentenced appellant to twelve years as follows: seven years for count 1, enhanced by a five-year section 11379.8 term. The trial court imposed concurrent terms on counts 3, 8, and 10.

Appellant failed to secure a certificate of probable cause. (Pen. Code, § 1237.5.)[4]

DISCUSSION

I.

Appellant's contention the trial court erred in failing to stay, under Penal Code section 654, the section 11379.8, subd. (a)(2) quantity enhancement term of his sentence is not cognizable on this appeal because appellant did not procure the required certificate of probable cause under Penal Code section 1237.5. (*People v. Panizzon* (1996) 13 Cal.4th 68, 79 ["[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself" and thus is subject to compliance with Penal Code section 1237.5]; *People v. Mendez* (1999) 19 Cal.4th 1084, 1098 [Failure to timely seek and obtain a certificate of probable cause precludes appellate review].)

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[4] Penal Code section 1237.5 states:

> "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met:
>
> "(a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.
>
> "(b) The trial court has executed and filed a certificate of probable cause for such appeal with the county clerk."

In any event, the claim is without merit. (Cal. Rules of court, rule 412 (b) ["By agreeing to a specified prison term personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates [Penal Code] section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record."]; *People v. Hester* (2000) 22 Cal.4th 290, 295 [When defendant agrees to a maximum indicated sentence as part of a negotiated plea, rule 412(b) applies if the defendant "did not raise a section 654 objection ... at the change of plea hearing."].) The circumstances here are indistinguishable from those in *Hester*, where the plea included the provision that the defendant "'would receive no more than four years'" imprisonment.[5]

II.

Appellant's contention the term based upon the section 11379.8, subd. (a)(2) quantity enhancement was improperly imposed is not cognizable on appeal because

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[5] Insofar as is relevant, the record of appellant's plea hearing, at which he was represented by counsel, discloses the following terms, among others:

> "THE COURT: ... If you enter the pleas indicated and admit the enhancement, you will to that extent be giving up your right to remain silent, and you will by virtue of those pleas and admissions be incriminating yourself. [¶] Do you understand those rights, sir?
>
> "THE DEFENDANT: Yes.
>
> "THE COURT: And do you give up those rights?
>
> "THE DEFENDANT: Yes.
>
> "THE COURT: Now, *under the terms of the plea bargain, the maximum time that you can be required to spend in custody as a result of the plea would be 12 years in state prison*. … [¶] Do you understand that, sir?
>
> "THE DEFENDANT: Yes." (Italics added.)

appellant did not procure the required certificate of probable cause under Penal Code section 1237.5. (*People v. Panizzon*, *supra*, 13 Cal.4th at p. 79; *People v. Mendez*, *supra*, 19 Cal.4th at p. 1098.)[6]

III.

The trial court did not err in denying appellant's motion to unseal the affidavits supporting the search warrant which led to the information in this case and appellant's motion to quash and traverse such warrant. First, our independent review of the in camera proceedings on the sealed affidavits persuades us the magistrate reasonably could have concluded that a crime had been committed in Los Angeles County and therefore a present or future prosecution was possible there.[7] (See *People v. Fleming* (1981) 29 Cal.3d 698, 707 [a magistrate's jurisdiction to issue an out-of-county warrant is predicated upon a probable cause showing that the evidence sought relates to a crime committed within the magistrate's county and thus pertains to a present or future prosecution in that county].) In any event, the good faith rule of *United States v. Leon* (1984) 468 U.S. 897 applies to the warrant even if the required county nexus was not present. (See *People v. Ruiz* (1990) 217 Cal.App.3d 574, 578 [officer from Placer County obtained a search warrant from a Placer County magistrate authorizing a search in Sacramento County, without telling the magistrate where crimes had occurred; "The failure to comply with the *Fleming* rule is not a type of irregularity which will, on its face, preclude application of the *Leon* rule."]; accord *People v. Galvan* (1992) 5 Cal.App.4th 866, 871 [it was merely a "technical error" for San Bernardino County

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6 Appellant contends the five-year term was improperly included in his sentence because the trial court failed to secure from appellant an admission of appellant's "substantial involvement" in the conspiracy.

7 The people concede, and we agree, that, notwithstanding appellant's guilty plea, we may review the sealed affidavit and in camera proceedings. (*People v. Hobbs* (1994) 7 Cal.4th 948, 956-957.)

magistrate to direct Los Angeles County officers to conduct search in San Bernardino County]; *People v. Dantzler* (1988) 206 Cal.App.3d 289, 292 [not reversible error for a San Francisco magistrate to authorize the search of an apartment in San Mateo County].)

Second, our review of the sealed in camera proceedings and the sealed affidavit(s) supporting the warrant satisfies us that (1) the warrant was issued upon sufficient probable cause, (2) the supporting affidavit(s) were required to be sealed in their entirety in order to maintain the confidentiality of the informant, and (3) to use appellant's words, no "additional information was developed [at the in camera hearing] which was then used to support the trial court's ruling denying [appellant's] motion to suppress." (See *People v. Hobbs, supra,* 7 Cal.4th at p. 975.)

DISPOSITION

The judgment is affirmed.

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Dibiaso, Acting P.J.

WE CONCUR:

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Vartabedian, J.

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Cornell, J.