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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW PAUL DUNCAN, Defendant and Appellant.	F044267 (Super. Ct. No. RF003987A) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Lee P. Felice, Judge.

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

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Brian Alvarez and Connie A. Proctor, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Buckley, Acting P.J., Cornell, J., and Dawson, J.

Appellant Matthew Paul Duncan correctly contends the trial court sentenced him twice for the same offense. We will modify the judgment by striking the second sentence.

BACKGROUND

According to Duncan's probation report, a Ridgecrest police officer noticed Duncan driving a vehicle without a license plate on August 16, 2003. Duncan provided the officer with his brother's name and birth date and said he did not have his driver's license with him. The officer recognized Duncan's passenger as a probationer whose residence police had recently searched and discovered narcotics paraphernalia, various firearms, and ammunition.

Additional officers arrived and searched Duncan, his passenger, and the vehicle. As one of the officers pulled a plastic baggie containing a white crystalline substance from a tote bag in the back seat of the car, Duncan stood up quickly and fled. Police apprehended Duncan a block away but he continued to struggle. The baggie was later determined to contain 1.68 grams of a substance containing methamphetamine.

On August 28, 2003, Duncan pled no contest to resisting arrest (Pen. Code, § 148, subd. (a)(1); count 3) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 4) pursuant to a negotiated plea arrangement. The agreement included Duncan serving up to a year in jail as a condition of felony probation and the dismissal of second-strike charges (Pen. Code, §§ 677, 1170.12) of transportation of methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a); count 1) and possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 2). The People conditioned the agreement on a resisting arrest plea under count 3 "solely to bar" Duncan from qualifying for Proposition 36 drug treatment.

Immediately after accepting Duncan's plea, the trial court stated:

> "[THE COURT:] On that Count 3, a misdemeanor, you will be ordered to serve a jail sentence --

"THE BAILIFF: 13 days.

"THE COURT: -- 19 days. You have credit for 13 actual days, six days good and work time.

"On Count 4, the felony possession of controlled substance, the matter will be referred to the Probation Department for a presentence investigation and report."

The trial court's minutes similarly recorded:

"DEFENDANT TO SERVE 19 DAYS CUSTODY AS TO COUNT 3.

"CREDIT FOR TIME SERVED OF 13 DAYS PLUS 6 DAYS GOOD AND WORK TIME, FOR A TOTAL OF 19 DAYS."

At a September 25, 2003, sentencing hearing, the probation officer returned with a recommendation for Duncan to serve 16 months in state prison on count 4 and a concurrent year in county jail on count 3. Recalling the terms of the agreement, the trial court instead ordered Duncan to serve a year in county jail as a condition of three years of probation on count 4 and a concurrent year in county jail on count 3.

DISCUSSION

Duncan argues, and the Attorney General agrees, the trial court sentenced Duncan twice for resisting arrest under count 3.

"The Double Jeopardy Clause of the Fifth Amendment provides that no person shall 'be subject for the same offence to be twice put in jeopardy of life or limb.' This constitutional guarantee is applicable to the States through the Due Process Clause of the Fourteenth Amendment …." (*Illinois v. Vitale* (1980) 447 U.S. 410, 415.) "Similarly, article I, section 15, of the California Constitution provides: 'Persons may not twice be put in jeopardy for the same offense....' " *(People v. Saunders* (1993) 5 Cal.4th 580, 593.) The prohibition against double jeopardy protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. (*People v. Prince* (1996) 43 Cal.App.4th 1174, 1177-1178.)

In a criminal case, judgment is rendered when the trial court orally pronounces sentence. (*People v. Karaman* (2001) 4 Cal.4th 335, 344, fn. 9, citing Pen. Code, §§ 1191 and 1202.) "Under the general common law rule, a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced." (*Id*. at p. 344.) The execution of a judgment of conviction is the process of carrying the judgment into effect. (*Ibid*.)

At the August 28, 2003, proceeding, the trial court accepted Duncan's plea as to counts 3 and 4 and imposed a 19-day sentence consisting entirely of time served for resisting arrest under count 3. Because Duncan completed his sentence while in custody awaiting trial, the judgment was carried into effect and executed immediately upon its rendition. Double jeopardy principles precluded any judicial action that resulted in an increase in the penalty. (*People v. Karaman, supra,* 4 Cal.4th at pp. 348-349.) The trial court therefore lacked jurisdiction to subsequently impose a one-year jail term penalty for the same offense.

DISPOSITION

The judgment is modified as to count 3, resisting arrest (Pen. Code, § 148, subd. (a)(1)), by striking the one-year concurrent county jail term and reimposing the August 28, 2003, sentence of 19 days for time served. In all other respects, the judgment is affirmed.