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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ANDREW NELSON,

Defendant and Appellant.

A140426, A143842

(Contra Costa County
Super. Ct. No. 05-131384-0)

I. INTRODUCTION

A jury convicted defendant Christopher Andrew Nelson of residential burglary (Pen. Code,¹ §§ 459, 460, subd. (a)) and receiving stolen property (§ 496, subd. (a)). The trial court sentenced him to nine years in state prison. Defendant has appealed this conviction, arguing that he could not be convicted of both burglary and receiving stolen property. He also claims the trial court erred in instructing the jury on the amount of corroborating evidence necessary to prove the burglary charge.

While the instant appeal was pending, in November 2014, the California voters enacted Proposition 47, entitled “the Safe Neighborhoods and Schools Act.” (§ 1170.18.) Thereafter, despite the pending appeal of his conviction, defendant filed a petition to

¹ All further undesignated statutory references are to the Penal Code.

recall his sentence, which the trial court denied. Defendant has separately appealed that decision.²

Finding no error in defendant's conviction, we affirm the judgment. However, we conclude the trial court erred in denying the petition for recall as it lacked jurisdiction to make any findings regarding defendant's petition for recall of sentence. Accordingly, the trial court's order denying defendant's petition is void.

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 29, 2013, defendant burglarized a home on Almond Drive in Oakley. Defendant took many items, including a laptop computer, jewelry, a video game console, tools, and a digital camera. At the time of his arrest, defendant was in possession of several of these items. Defendant's cell phone was also found at the scene of the crime.

By information filed July 10, 2013, the Contra Costa County District Attorney charged appellant with residential burglary (§§ 459, 460, subd. (a)), and receiving stolen property (§ 496, subd. (a)). The information alleged one prior strike (§§ 667, subds. (b)-(i), 1170.12), one prior serious felony conviction (§ 667, subd. (a)(1)), one prior prison-term commitment (§ 667.5, subd. (b)), and probation ineligibility (§ 1203.085, subd. (b)).

On September 12, 2013, trial by jury commenced. The evidence at trial established that on the afternoon of April 29, 2013, defendant, then 17 years old, and 15 year-old T.B. met up at O'Hara Park. The two left the park when defendant said he wanted to commit a burglary. T.B. testified that she told defendant that she did not want to participate and she became angry. As defendant and T.B. were walking down a residential street, they saw a family drive away from their home. Defendant told T.B. to be the lookout and warn him if anyone came. Defendant went up to the residence and entered through a window. Defendant was inside the residence for three to five minutes. He came out of the window, carrying an orange backpack. Defendant and T.B. walked back to O'Hara Park, where defendant discovered that he had lost his cell phone. Defendant told T.B. to return to the residence to retrieve the phone. T.B. headed back to

² On our own motion we have consolidated the two appeals.

the residence. However, upon seeing the family van return to the residence, T.B. abandoned plans to retrieve the phone and she went back to the park. Defendant used T.B.'s phone to call his mother for a ride. Defendant said: " 'Mom, I just hit a lick.' " T.B. explained that this phrase meant that defendant had just "burglarized a house."

T.B. warned defendant that a police car was coming, and he ran. A boy on a bike rode up and asked for his PlayStation back. T.B. told police that she knew nothing about the burglary. T.B. was prosecuted in juvenile court, sentenced, and not promised anything for testifying. At trial, T.B. identified defendant's cell phone.

Tyler Norris testified that on the afternoon of April 29, 2013, he came home to find that his PlayStation 3 was missing. Tyler rode his bicycle to the park and saw defendant wearing his (Tyler's) orange backpack. Tyler yelled that he wanted his property back, and defendant ran away. Later, Tyler found his backpack in some bushes by the school. The backpack contained his PlayStation 3, a laptop, and a video game store card.

Sarah Norris testified that on the afternoon of April 29, 2013, she saw defendant and a female walking outside and being loud. Norris left to pick up her daughter. Norris returned about 25 minutes later and saw defendant at the park and the female about two houses down from Norris's residence. The female ran away upon seeing Norris. Norris's home had been ransacked. Her son, Tyler, was angry that his PlayStation was missing. Later, a police officer returned some of Norris's missing property, including jewelry and a camera. Norris identified defendant and T.B. at a police show-up. Outside on her front porch, Norris found a cell phone, which was later identified as belonging to defendant.

Deputy Sheriff Logan Cartwright testified that he was on his motorcycle on the Cypress trail, when he first saw defendant. Deputy Cartwright told defendant to stop, but defendant continued walking away. As defendant stopped, he took a few steps away from the deputy and appeared to be looking for an escape route. Deputy Cartwright detained defendant. Deputy Cartwright found stolen property in defendant's pockets.

Deputy Sheriff Terry Black testified that he detained T.B. at O'Hara Park. T.B. had no property with her and she complained that defendant had her cell phone.

Defendant did not testify at trial, but defense counsel urged the jury not to believe T.B., arguing instead that the jury should infer that T.B. was the one who had broken into the house. The prosecutor argued that the stolen property received by defendant was the property taken in the burglary because “he knows it’s stolen ‘cause he just did it, and it’s in his pockets.”

On September 19, 2013, the jury found appellant guilty as charged.

On November 22, 2013, the trial court found the alleged priors true and imposed a state prison term of nine years: two years doubled to four years on the burglary charge, a two-year concurrent term for receiving stolen property, plus a consecutive five-year term for the prior serious felony conviction; the prior prison term was stricken.

On November 26, 2013, four days after the sentencing hearing, defendant filed a notice of appeal with this court (case No. A140426).

On November 4, 2014, the voters enacted Proposition 47, which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a); *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) On November 19, 2014, defendant filed a petition in the trial court to have his felony conviction for receiving stolen property reduced to a misdemeanor. Defendant argued that Proposition 47’s resentencing provisions applied to the stolen property count because the property in question was less than \$950.

The trial court denied that petition, finding defendant was ineligible for resentencing due to his residential burglary conviction. Defendant then filed a second notice of appeal (case No. A143842) from the denial of his petition to recall sentence on the receipt of stolen property count.

III. DISCUSSION

A. Convictions for Burglary and Receiving Stolen Property

Defendant contends the trial court improperly found both the burglary and receiving stolen property allegations to be true, and the receiving finding must be reversed. “It has long been the rule that a defendant cannot be convicted of stealing and receiving the same property.” (*People v. Strong* (1994) 30 Cal.App.4th 366, 370.) In 1992, the Legislature codified this rule by adding the following language to the Penal

Code: “A principal in the actual theft of the property may be convicted [of receiving stolen property]. However, no person may be convicted *both* [of receiving stolen property] and of the theft of the same property.” (§ 496, subd. (a), italics added; *People v. Allen* (1999) 21 Cal.4th 846, 861 (*Allen*); *People v. Jaramillo* (1976) 16 Cal.3d 752, 757, superseded by statute on another ground as stated in *People v. Strong, supra*, 30 Cal.App.4th 366, 371-372.) It is equally well settled, however, that a person may be convicted of both burglary and receiving stolen property in violation of section 496, subdivision (a), with respect to the property he stole in the burglary. (*Allen, supra*, 21 Cal.4th at pp. 865-867.) The dual convictions of burglary and receiving stolen property do not run afoul of section 496 because “ ‘theft is not an element of burglary’ [citation].” (*Allen, supra*, 21 Cal.4th at p. 864.)

In *Allen, supra*, 21 Cal.4th 846, the defendant burglarized three homes, stealing jewelry from each. (*Id.* at pp. 849-850.) He was convicted of three counts of burglary and two counts of receiving stolen property involving the jewelry taken in two of the burglaries. (*Id.* at p. 850.) The California Supreme Court held the defendant was properly convicted of both burglary and receiving stolen property by reason of the fact that burglary does not require the actual theft of any property. (*Id.* at p. 865.) As such, “[a] defendant who is convicted of burglary is not convicted of stealing any property at all.” (*Id.* at p. 866.)

The *Allen* court also found that dual convictions for burglary and receiving stolen property were authorized by section 954, which provides in, relevant, part “that (1) a defendant may be charged in a single pleading with ‘two or more different offenses connected together in their commission’; (2) the prosecution need not elect between those offenses; and (3) ‘the defendant may be convicted of any number of the offenses charged’ ” (*Allen, supra*, 21 Cal.4th at p. 866.)

The court further explained that “[w]hen, as here, a defendant is charged with burglary and with a violation of section 496 with respect to property he stole in the burglary, he has plainly been charged with ‘two or more offenses connected together in their commission’ within the meaning of section 954. By its terms, therefore, section 954

likewise authorizes the defendant to ‘be convicted of [both] of the offenses charged. . . .’ ” (*Allen, supra*, 21 Cal.4th at p. 866, fn. omitted.)

In the instant case, defendant was convicted of one count of burglary and one count of violating section 496, subdivision (a), with respect to property he stole in the burglary; the jury found him guilty on all counts; and the trial court convicted him on all counts.³ This disposition was correct.

B. CALCRIM No. 376

Defendant next contends the trial court erred in instructing the jury with CALCRIM No. 376 (possession of recently stolen property) because it undermined his federal constitutional right to have a jury convict him only if it found him guilty beyond a reasonable doubt.

In reviewing challenged jury instructions, we must determine whether it is reasonably possible the jury could have applied the instruction in a way that violates the Constitution. (*People v. Frye* (1998) 18 Cal.4th 894, 957, overruled on other grounds as stated in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) In conducting this inquiry, we consider the instructions as a whole. (*People v. Carrasco* (2006) 137 Cal.App.4th 1050, 1061.) We review de novo the validity of the trial court’s jury instructions. (*People v. Burch* (2007) 148 Cal.App.4th 862, 870.)

In this case, the trial court instructed the jury with CALCRIM No. 376, as follows: “If you conclude that the defendant knew he possessed property and you conclude that the property had in fact, been recently stolen, you may not convict the defendant of residential burglary or receiving stolen property based on those facts alone. However, if you also find that supporting evidence tends to prove his guilt, then you may conclude that the evidence is sufficient to prove he committed residential burglary. [¶] *The supporting evidence need only be slight and need not be enough by itself to prove guilt.* You may consider how, where, and when, the defendant possessed the property, along

³ At defense counsel’s urging, the trial court imposed a concurrent term for the section 496 offense.

with any relevant circumstances tending to prove his guilt of residential burglary.

[¶] Remember that you may not convict the defendant of any crime unless you are . . . convinced that each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt.” (Italics added.)

Defendant acknowledges that courts have consistently held that CALCRIM No. 376 and its predecessor, CALJIC No. 2.15, do not lower the prosecution’s burden of proof. (See *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 189 [“there was no suggestion in [CALJIC No. 2.15] that the jury need not find that all of the elements of robbery (or theft) had been proved beyond a reasonable doubt”]; *People v. Gamache* (2010) 48 Cal.4th 347, 376 [CALJIC No. 2.15 does not lower prosecution’s burden of establishing guilt beyond a reasonable doubt]; *People v. Lopez* (2011) 198 Cal.App.4th 698, 711 [CALCRIM No. 376 does not lower burden of proof]; *People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1576-1577 [same].) Nevertheless, he insists that none of these cases examined the effect of the circumstantial evidence instructions which permit a jury to infer facts from proof of other facts.

Specifically, defendant contends that from the general circumstantial evidence instruction (CALCRIM No. 223) and the flight instruction (CALCRIM No. 372), together with CALCRIM No. 376, a juror “could reasonably conclude that possession of the items stolen from the Norris home, plus evidence of flight, was circumstantial evidence ‘sufficient to prove he committed residential burglary.’ ” We are not persuaded.

To begin with, the fact that defendant possessed recently stolen property is not “slight evidence” of his involvement in the burglary. Rather, “[p]ossession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt. [Citations.]” (*People v. McFarland* (1962) 58 Cal.2d 748, 754.)

“Second, the inference that possession of stolen property creates is permissive, not mandatory. The case law is settled that requiring only slight corroborating evidence in support of a permissive inference, like the one that possession of stolen property creates,

neither changes the prosecution's burden of proving every element of the offense nor otherwise violates the right to due process if, as here, the conclusion suggested is one that common sense and reason can justify 'in light of the proven facts before the jury.' [Citations.]" (*People v. Solórzano* (2007) 153 Cal.App.4th 1026, 1035-1036.)

"The permissive inference that CALCRIM No. 376 authorizes if the jury finds slight supporting evidence is linguistically synonymous with, and constitutionally indistinguishable from, the permissive inference that CALJIC No. 2.15 authorizes if the jury finds slight corroborating evidence. CALJIC No. 2.15 has withstood repeated constitutional attack. [Citations.] Like CALJIC No. 2.15, CALCRIM No. 376 neither undermines the presumption of innocence nor violates due process." (*People v. Solórzano, supra*, 153 Cal.App.4th at p. 1036; see *People v. Prieto* (2003) 30 Cal.4th 226, 248.)

Finally, CALCRIM No. 376 did not reduce the prosecution's burden of proof, conveying to the jury that possession of stolen property, plus any slight evidence of guilt equaled proof beyond a reasonable doubt. The jury was instructed that the prosecutor had to prove each element of the charged offenses beyond a reasonable doubt. Defendant's claim that the jury failed to follow such instructions amounts to nothing more than mere speculation. "Jurors are presumed able to understand and correlate instructions and are further presumed to have followed the court's instructions. [Citation.]" (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.) More importantly, the evidence of defendant's guilt was more than slight. The evidence before the jury included defendant's conduct, including his stated intention of committing a burglary and his evasive behavior upon being contacted by police, together with the presence of his cell phone at the scene of the crime, his possession of the stolen property just moments after the burglary, as well as his phone call to his mother, indicating that he had just burglarized a house. Given this evidence, CALCRIM No. 376 allowed a permissible inference that defendant's possession of the recently stolen property could corroborate that he was guilty of burglary.

C. *Petition to Recall Sentence*

Defendant argues that the trial court erred in concluding that a concurrent conviction for residential burglary rendered him ineligible for resentencing under Proposition 47. The Attorney General, although conceding this error, insists the trial court lacked jurisdiction, by reason of the pending appeal in case no. A140426, to consider defendant's petition for recall. Defendant insists that section 1170.18 vests the trial court with limited concurrent jurisdiction to entertain a petition for recall and resentencing of convictions for enumerated offenses. We disagree.

Section 1170.18 provides a mechanism for those who were convicted and sentenced before the enactment of Proposition 47. That remedy is to petition the superior court to reduce the conviction to a misdemeanor if qualified for such treatment under the act. (*People v. Awad* (2015) 238 Cal.App.4th 215, 220 (*Awad*); *People v. Rivera, supra*, 233 Cal.App.4th at p. 1089.) Here, defendant attempted to avail himself of that remedy while the appeal from his felony convictions was pending. Two recent appellate court opinions, both published after briefing in the instant consolidated appeal was complete, are instructive.

In *Awad*, as here, the defendant was sentenced and appealed before Proposition 47 (§ 1170.18) became effective. Defendant *Awad* appealed challenging various counts and also claimed one of the counts should be reduced to a misdemeanor. (*Id.* at pp. 218-219.) The trial court, however, declined to hear the petition on the ground that it lacked jurisdiction to recall the sentence while the case was pending on appeal. (*Id.* at p. 218.) The appellate court referred to the defendant's position as a "Hobson's choice." (*Ibid.*) He could either pursue his appeal and after the remittitur is returned, then address the Proposition 47 issue, or abandon his appeal. (*Ibid.*) In such instance, the appellate court reasoned that the passage of time during appeal would have diminished the benefit of the reduction to the defendant. (*Id.* at p. 221.) The appellate court issued a limited remand under section 1260, and stayed the pending appeal, to allow the trial court to address the misdemeanor issue. (*Awad, supra*, 238 Cal.App.4th at pp. 222, 225.) Section 1260 states, in full: "The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment

imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.”

Awad construed section 1260 as authorizing appellate courts to direct a limited remand to the trial court as among the many available remedies in reviewing criminal appeals. The court reasoned that “ ‘[a] limited remand is appropriate under section 1260 to allow the trial court to resolve one or more factual issues affecting the validity of the judgment but distinct from the issues submitted to the jury, *or for the exercise of any discretion that is vested by law in the trial court.*’ (*People v. Braxton* (2004) 34 Cal.4th 798, 818-819, italics added.)” (*Awad, supra*, 238 Cal.App.4th at p. 222, fn. omitted.)

The court in *People v. Scarbrough* (2015) 240 Cal.App.4th 916 (*Scarbrough*), faced a similar situation, but reached a different conclusion. There, as here, the defendant petitioned for resentencing under Proposition 47, while her appeal from her judgment of conviction was pending. (*Id.* at p. 920.) After thoroughly reviewing the limited exceptions in which a trial court retains jurisdiction once execution of a sentence has begun, the appellate court concluded the trial court lacked jurisdiction to recall the defendant’s sentence. (*Id.* at pp. 929-930.) *Scarbrough* began its analysis with the plain language of section 1170.18, subdivision (a), which provides: “ ‘A person currently serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with [enumerated sections, including Health and Safety Code section 11350], as those sections have been amended or added by this act.’ The trial court must then determine if the petitioner is eligible for resentencing; if so, the trial court must recall and resentence the petitioner, unless it determines that doing so ‘would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).) A person seeking relief under this section must file his or her petition ‘within three years after the effective date of the

act that added this section or at a later date upon a showing of good cause.’ (§ 1170.18, subd. (j).)” (*Scarborough, supra*, 240 Cal.App.4th at p. 924.)

The defendant in *Scarborough* argued section 1170.18 provided concurrent jurisdiction because the statutory language did not limit eligibility to persons with final judgments. (*Scarborough, supra*, 240 Cal.App.4th at pp. 922-924.) In rejecting this contention, the court found *People v. Yearwood* (2013) 213 Cal.App.4th 161, 177 (*Yearwood*), which interpreted analogous language in section 1170.126 (Proposition 36), to be instructive. (*Scarborough, supra*, 240 Cal.App.4th at p. 924.) “*Yearwood* interpreted section 1170.126 and held it was not applicable to those whose judgments were not yet final. *Yearwood* relied on the general principle that a trial court lacks jurisdiction over a cause while an appeal is pending. (*Yearwood*, at p. 177.) It found that the statute’s provision of a ‘good cause’ exception to its two-year filing period permitted prisoners to pursue relief under section 1170.126 once the appellate proceedings were complete. (*Yearwood*, at p. 177.) *Yearwood* further noted that ‘[i]t is reasonable for the voters to have designed a statutory process where the trial court considers a petition for a recall of sentence after final resolution of legal issues related to the conviction and original sentence (which may have components that are unaffected by [the Three Strikes Reform Act of 2012].)’ (*Ibid.*)” (*Scarborough, supra*, 240 Cal.App.4th at p. 925.)

Scarborough also distinguished *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1835, which held that section 1170, subdivision (d),⁴ providing a 120-day exception to the general bar on trial court action while an appeal is pending, sets forth “ ‘a specific scheme for the trial court to exercise jurisdiction for a limited time after it normally would have lost jurisdiction.’ ” (*Scarborough, supra*, 240 Cal.App.4th at

⁴ Section 1170, subdivision (d)(1) states that “[w]hen a defendant . . . has been sentenced to be imprisoned in the state prison . . . and has been committed to the custody of the secretary, . . . the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, . . . recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence”

pp. 925-926.) *Scarborough* explained that *Portillo*'s reasoning was "premised on long-standing rules of statutory interpretation that seek to avoid surplusage and that favor a specific statute over a general one regarding the same subject matter. (*Portillo, supra*, at p. 1835.) For, if a person were to appeal a conviction, the 120-day period in which the trial court must, if at all, exercise its jurisdiction to recall and resentence a defendant on its own motion would necessarily lapse while the appeal was ongoing. To read section 1170, subdivision (d) as *not* providing for concurrent trial and appellate court jurisdiction, would render it surplusage, which is a result we strive to avoid. [Citation]." (*Scarborough, supra*, 240 Cal.App.4th at pp. 925-926.)

Scarborough explained "[t]here is no similar issue in the interpretation of section 1170.18. Relief may be sought pursuant to this section for a period of 'three years after the effective date of the act that added this section or at a later date upon a showing of good cause.' (§ 1170.18, subd. (j), italics added.) This relief is available only to those who have already been sentenced and are either currently serving or have already completed serving their sentence. (See § 1170.18, subds. (a), (f).) By providing three years, or longer on a showing of good cause, to petition or apply to the sentencing court for relief, the voters have amply provided eligible convicted persons time to fully pursue their appellate challenges to their convictions *before* seeking recall and resentencing pursuant to its provisions. Thus, unlike section 1170, subdivision (d), there is no need to interpret section 1170.18 as creating concurrent jurisdiction to avoid rendering it superfluous." (*Scarborough, supra*, 240 Cal.App.4th at p. 926.)

Scarborough also rejected the contention that the voters' intent would be frustrated if section 1170.18 were not interpreted to create concurrent jurisdiction. (*Scarborough, supra*, 240 Cal.App.4th at pp. 928-929.) The defendant in *Scarborough* asserted that Proposition 47 " 'emphasiz[ed] monetary savings.' " (*Id.* at p. 928.) The appellate court recognized the stated purpose and intent of Proposition 47 was, among other things, " 'to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs' (Voter Information Guide, Gen.

Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)” (*Ibid.*) However, it reasoned that “[b]y concluding there is no concurrent jurisdiction to resentence a defendant pursuant to section 1170.18, we merely delay the resentencing; we do not preclude its application. Thus, there is still the potential for monetary savings, even if the savings are not as extensive as they may otherwise be And, a person who would prefer to seek relief by resentencing has the option of abandoning [their] appeal prior to filing a petition pursuant to section 1170.18 in the trial court.” (*Scarborough*, 240 Cal.App.4th at p. 928.)

Finally, *Scarborough* “recognize[d] that several people with pending appeals have been resentenced ostensibly pursuant to section 1170.18 while their appeals were pending. [And, although, t]his does create a quagmire, . . . [this] is an insufficient reason for us to find concurrent jurisdiction where it was not statutorily afforded.” (*Scarborough*, *supra*, 240 Cal.App.4th at pp. 928-929.) *Scarborough* further noted that *Awad* was inapplicable, where, as there, “the trial court granted defendant’s petition despite the pending appeal and without any direction” from the appellate court. (*Id.* at p. 930, fn. 5.)

We conclude the instant case is more analogous to *Scarborough* than *Awad*. We are persuaded that the reasoning and the analysis in *Scarborough* is applicable here. Unlike the court in *Awad* we have already determined the merits of defendant’s pending appeal. A limited stay like the one authorized in *Awad* is simply unworkable here.

In sum, we conclude that neither the language nor intent of section 1170.18 or Proposition 47 causes us to find an exception to the general rule that a trial court may not issue an order affecting a judgment while an appeal is pending. Thus, we hold the trial court’s order denying defendant’s petition to recall and resentencing is void and must be vacated.

IV. DISPOSITION

The judgment of conviction is affirmed. The trial court’s November 21, 2014 order denying defendant’s petition to recall is void. The matter is remanded to the trial court with directions to enter an order dismissing the petition. In all other respects, the judgment is affirmed without prejudice to any remedies defendant may have under section 1170.18.

REARDON, ACTING P; J.

We concur:

RIVERA, J.

STREETER, J.