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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

VICTOR MANUEL JACOBO et al.,

Real Parties in Interest.

D062615

(Riverside County
Super. Ct. No. INF062270)

PROCEEDINGS in mandate after superior court dismissed criminal proceedings.

James S. Hawkins, Judge. Petition granted.

FACTUAL AND PROCEDURAL BACKGROUND

A Riverside County Superior Court jury convicted Victor Jacobo and Julian Mendoza of kidnapping to commit robbery, burglary, false imprisonment, and robbery, and found certain enhancements true. The court sentenced each defendant to life in

prison on the conviction for kidnapping to commit robbery plus additional determinate terms. Jacobo and Mendoza appealed. The Supreme Court later transferred the appeal from Division Two to this court.

On April 2, 2012, we reversed Jacobo's convictions on the kidnapping to commit robbery, burglary, and robbery counts, ordered the enhancement for personal weapon use on Jacobo's false imprisonment conviction be stricken, and reversed Mendoza's convictions on separate counts. We affirmed the judgment with respect to the remaining convictions and enhancements, and "remand[ed] this matter back to the superior court for such further proceedings as may be appropriate." The remittitur issued on June 20.

On June 27, "in compliance with the remittitur" and in the absence of counsel, the trial court set aside the convictions on the counts that had been reversed on appeal and vacated Jacobo's sentence on the enhancement. The court also found Jacobo and Mendoza not guilty on the reversed counts, and ordered the abstracts of judgment amended.

The deputy district attorney later reviewed the minute orders, and wrote the court asking for clarification of what had occurred on June 27, and stating that the prosecution had the right to retry—and fully intended to retry—Jacobo and Mendoza on the reversed charges. On July 13, in what the People characterize as an attempt to correct its mistake, the court found that "the minute order[s] dated 6/27/2012 do[] not correctly/clearly reflect the court order," directed that the June 27 minute orders be corrected nunc pro tunc to strike the not guilty findings and vacate the dismissals, and set the case for further proceedings.

The People filed a writ petition in Division Two, asserting the trial court improperly dismissed the reversed counts without giving them an opportunity to retry the defendants and also erred later by reinstating the dismissed counts. Division Two issued *Palma* notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171), requested a response by August 23, and stayed the proceedings below. No response was filed. The petition was later transferred to this court.

DISCUSSION

Our disposition reversing the convictions on specified counts and remanding the matter to the superior court for further proceedings as appropriate constitutes an unqualified reversal and, under Penal Code section 1262, is deemed an order for a new trial. The trial court did not have authority to dismiss the convictions or find the defendants not guilty on the reversed charges. Nor did it have the authority to vacate the orders that it deliberately but erroneously entered terminating the prosecution. (*Smith v. Superior Court* (1981) 115 Cal.App.3d 285, 289, 292-293, citing *In re Calendario* (1970) 3 Cal.3d 702, 705.)

Because the facts are not in dispute, the law is well-settled, defendants have not opposed the petition, and the matter should be expedited, we conclude a peremptory writ in the first instance is proper. (Code of Civ. Proc., § 1088; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223, disapproved on another ground in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 724, fn. 4; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.)

DISPOSITION

Let a writ of mandate issue directing the superior court to set aside the orders of June 27, 2012, and July 13, 2012, and issue an order consistent with this opinion. The stay issued on August 14, 2012, is vacated. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(3).)

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.