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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Appellant,

v.

OSCAR SANCHEZ,

Defendant and Respondent.

D068332

(Super. Ct. No. SCN326344)

APPEAL from a judgment of the Superior Court of San Diego County, Michael J. Popkins, Judge. Reversed.

Bonnie M. Dumanis, District Attorney, James E. Atkins, Craig E. Fisher, Maria Teresa Santana and Brooke E. Tafreshi, Deputy District Attorneys, for Plaintiff and Appellant.

Torres & Torres and Steven A. Torres for Defendant and Respondent.

The People appeal from the sentence imposed on Oscar Sanchez following the trial court's recall of Sanchez's original sentence. Sanchez's original prison sentence of

32 months was based on the terms of a plea agreement, in which he pled guilty to burglary (Pen. Code, § 459)¹ and admitted a prior strike (§§ 667, subds. (b)-(i), 1170.12, 668). Upon recall of the sentence, the trial court entered an order striking Sanchez's prior strike and sentenced him to a prison sentence of two years.

The People contend that the trial court acted in excess of its jurisdiction by striking the prior strike and resentencing Sanchez to a shorter sentence. We conclude that the People's argument has merit. We accordingly reverse the trial court's order striking Sanchez's prior strike and sentencing him to a two-year prison term, and we direct that the trial court reinstate the previous judgment and sentence.

I

FACTUAL AND PROCEDURAL BACKGROUND

Arising out of four separate alleged instances in which Sanchez used or attempted to use a stolen and forged check, a third amended complaint charged Sanchez with four counts of burglary (§ 459); one count of forgery of a check (§ 470, subd. (d)); one count of receiving stolen property (§ 496, subd. (a)); three counts of using the personal identification information of another (§ 530.5, subd. (a)); and one count of grand theft of personal property (§ 487, subd. (a)). The complaint also alleged several prior convictions, including a conviction for burglary in 2001 that was alleged to constitute a prior strike (§§ 667, subds. (b)-(i), 1170.12, 668).

¹ Unless otherwise indicated all further statutory references are to the Penal Code.

On December 8, 2014, the trial court accepted Sanchez's negotiated guilty plea to one count of burglary and his admission that he had incurred a prior strike. The factual basis for the plea was Sanchez's admission that he entered a bank with the intent to pass a fraudulent check.

According to the parties' plea agreement, Sanchez was to receive a low-term sentence on the burglary conviction of 16 months, which was to be doubled based on the strike, for a total sentence of 32 months. The parties also stipulated that Sanchez was to receive custody credits retroactive to December 9, 2013. Further, pursuant to the plea agreement, the People dismissed the remaining charges in the complaint. Following the terms of the plea agreement, the trial court sentenced Sanchez to a prison sentence of 32 months and calculated custody credits retroactive to December 9, 2013, for a total of 729 days of presentence credit.

On April 1, 2015, the trial court received a letter from Sanchez, in which Sanchez asked the trial court to modify his sentence so that he could comply with the reunification plan for his daughter, who was in foster care. Sanchez explained that because he had been classified by the prison as a validated associate of the Mexican Mafia, he had been placed in a segregated housing unit and would not be released until July 15, 2015.²

On April 2, 2015, the trial court issued an order recalling Sanchez's sentence pursuant to section 1170, subdivision (d) and set a May 12, 2015 resentencing hearing. The reporter's transcript for the May 12 hearing indicates that the trial court held an

² As the People explain, Sanchez specifically complained that "due to his prison classification . . . he did not receive conduct credits while in state prison."

unreported conference with the parties, and then went on the record to resentence Sanchez. The trial court ordered that it would strike Sanchez's prior strike "due to the fact that it is a nonviolent offense" and "was 14 years ago," and it would sentence Sanchez to the midterm sentence of two years on the burglary conviction. The trial court commented that the credits that Sanchez had accumulated would satisfy the two-year sentence so that Sanchez should soon be released from custody. The abstract of judgment was thereafter amended to indicate a sentence of two years.

The People filed an appeal from the trial court's May 12, 2015 order.

II

DISCUSSION

The People contend that the trial court erred in striking Sanchez's prior strike and resentencing him to a two-year prison term because it improperly imposed a sentence that was contrary to the plea agreement. As we will explain, we agree.

"[A] 'negotiated plea agreement is a form of contract,' . . . interpreted according to general contract principles. [Citations.] Acceptance of the agreement binds *the court and the parties* to the agreement." (*People v. Segura* (2008) 44 Cal.4th 921, 930, italics added (*Segura*)). "Although a plea agreement does not divest the court of its inherent sentencing discretion, 'a judge who has accepted a plea bargain is bound to impose a sentence within the limits of that bargain. [Citation.] "A plea agreement is, in essence, a contract between the defendant and the prosecutor to which the court consents to be bound." [Citation.] Should the court consider the plea bargain to be unacceptable, its remedy is to reject it, not to violate it, directly or indirectly. [Citation.] Once the court

has accepted the terms of the negotiated plea, "[it] lacks jurisdiction to alter the terms of a plea bargain so that it becomes more favorable to a defendant unless, of course, the parties agree." ' ' ' (*Id.* at p. 931.) Indeed, section 1192.5 states that "[w]here the plea is accepted by the prosecuting attorney in open court and is approved by the court, . . . the court may not proceed as to the plea other than as specified in the plea."

Here, there is no indication of any agreement between the parties that the trial court be permitted to alter the terms of the plea agreement by striking Sanchez's prior strike and sentencing Sanchez to a two-year prison term instead of the agreed-upon term of 32 months. The prosecutor expressly stated at the beginning of the May 12, 2015 hearing, "Your Honor, it's my understanding that you're intending to strike the strike. And for the record, *the People are opposed to that.*" (Italics added.) In the absence of an agreement by the parties, the trial court had no jurisdiction to alter the terms of the plea agreement. Accordingly, the sentence imposed as a result of the May 12, 2015 hearing was an unauthorized sentence, imposed in excess of the trial court's jurisdiction.

Sanchez contends that the People forfeited the right to argue on appeal that the trial court's May 12, 2015 order was in excess of its jurisdiction, as the prosecutor did not specifically identify that legal ground for objection when stating that the People were opposed to the trial court's intention to strike the prior strike. We reject the argument.

For one thing, the prosecutor's objection was very broad. Although the prosecutor did not detail the *legal basis* for the objection (which we presume was explained more fully at the unreported conference), the objection can reasonably be understood to encompass the most obvious legal ground applicable here, namely, that it would be

contrary to the plea agreement for the trial court to strike the prior strike and resentence Sanchez to a different term than specified in the plea agreement.

Moreover, even if the prosecutor's objection could not be understood as an objection on the ground that the trial court would be contravening the terms of the plea agreement, the forfeiture doctrine does not apply to a trial court's error in imposing a sentence in excess of its jurisdiction. Although the general rule is that all "'claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices' raised for the first time on appeal are not subject to review" (*People v. Smith* (2001) 24 Cal.4th 849, 852), an exception exists "for ' "unauthorized sentences" or sentences entered in "excess of jurisdiction." ' . . . Because these sentences 'could not lawfully be imposed under any circumstance in the particular case' . . . , they are reviewable 'regardless of whether an objection or argument was raised in the trial and/or reviewing court.' " (*Ibid.*, citations omitted.) Here, as we have explained, the trial court "'lack[ed] jurisdiction to alter the terms of a plea bargain so that it becomes more favorable to [the] defendant." ' " (*Segura, supra*, 44 Cal.4th at p. 931.) As challenges to sentences imposed in excess of the court's jurisdiction are not subject to forfeiture, we reject Sanchez's argument that the People forfeited their appellate argument by not making a more specific objection.

When a trial court resents a defendant under section 1170, subdivision (d), as occurred here, "section 1170 does not provide the trial court with any broader discretion to impose sentence than the court originally possessed at the initial sentencing. '[O]nce the sentence is recalled, for whatever lawful reason, the court's authority remains limited

to "resentenc[ing] the defendant in the same manner as if he or she had not previously been sentenced." ' ' " (*People v. Blount* (2009) 175 Cal.App.4th 992, 998.) Here, as we have explained, the plea agreement divested the trial court of any discretion to impose a sentence less than 32 months. Accordingly, because of the plea agreement, which the trial court accepted, the trial court did not have the authority either at the original sentencing or the resentencing to strike Sanchez's prior strike and sentence him to a two-year prison term. "The court accepted the terms of the plea agreement and was, therefore, bound to honor the terms of the agreement, including the stipulated sentence." (*Id.* at p. 997.)

Based on the foregoing, we reverse the order of May 12, 2015, and we direct that the original sentence and judgment be reinstated.

DISPOSITION

The trial court's May 12, 2015 order striking Sanchez's prior strike and sentencing Sanchez to a prison term of two years is reversed, and the trial court is directed to reinstate the original judgment and sentence. The trial court shall issue an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

IRION, J.

WE CONCUR:

AARON, Acting P. J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.