

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SEBASTIAN SERGIO ABARCA,

Defendant and Appellant.

E064865

(Super.Ct.No. SICRF1557666)

OPINION

APPEAL from the Superior Court of Inyo County. Brian J. Lamb, Judge.

Affirmed.

Arturo Santana, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Andrew Mestman and Kristen Hernandez, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Sebastian Sergio Abarca pled no contest to possession of methamphetamine while inside a correctional facility. (Pen. Code,¹ § 4573.6, count 1.) He also admitted he had one prior strike conviction. (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(j).) In accordance with the agreement, a trial court sentenced defendant to two years in state prison, doubled pursuant to the strike, for a total of four years.

Defendant now appeals, arguing that his plea form incorrectly states that he was convicted of a serious or violent felony. He requests that the matter be remanded for resentencing. We affirm.

PROCEDURAL BACKGROUND

On June 18, 2015, defendant signed and executed a “General Felony Advisement of Rights, Waiver, and Plea Form.” On the plea form, defendant initialed a paragraph entitled “Serious or Violent Felony Conviction,” which states: “I understand that my conviction(s) in this is to serious and/or violent felonies within the meaning of Penal Code §§ 1192.7, 1192.8, and/or 667.5. I understand that even if I am otherwise eligible for a grant of probation, the Court can not [*sic*] grant me probation unless the Court is satisfied with the Prosecutor[’]s statement of reasons for the plea agreement, as required by Penal Code § 1192.7. I also understand that my conviction(s) will constitute a ‘strike’ conviction. If I am ever convicted of any felony offense(s), at any time in the future, this

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

conviction(s) may be used as a strike prior(s) to enhance the sentence that could otherwise be imposed for the new felony or felonies. . . .”

Defendant also initialed a paragraph entitled “Limitation on Credits,” which states: “I understand that I will be convicted of a ‘violent’ felony under Penal Code § 667.5(c). If I am sentenced to state prison, under Penal Code § 2933.1, a 15 [percent] limitation applies to the conduct credits I can earn. . . .”

At the sentencing hearing, neither the trial court nor the attorneys discussed whether defendant’s current conviction was a serious or violent felony.

ANALYSIS

Remand for Resentencing is Not Necessary

Defendant seeks a modification of his plea form since it incorrectly states that the current conviction is a serious and/or violent felony within the meaning of sections 1192.7, 1192.8, and/or 667.5. He asserts that the plea form incorrectly reflects he was convicted of a strike offense that amounts to his second strike, and that if he were to reoffend, any future offense could be a third strike. Thus, he argues that the matter should be remanded for resentencing to reflect that he was not convicted of a strike offense. The People concede that defendant’s current offense is not a serious or violent felony, but contend that judicial intervention is not necessary since defendant has not suffered any adverse consequence as a result of the error on his plea form. In other words, the issue is not ripe for consideration. We agree with the People.

“The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.” (*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170.) To be ripe, “ [t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.’ ” (*Id.* at pp. 170-171.)

Defendant is essentially asking this court to remand the matter for the trial court to rule on a legal issue that is based on a hypothetical state of facts and speculative future events. He asserts that “*if* [he] were to re-offend[,] any future offense could be tantamount to a third strike.” (Italics added.) The issue is not ripe since he has not committed a third offense, and no prosecutor has alleged that his current conviction

constitutes a second strike. Thus, he has not suffered any adverse legal consequences of the error in the plea form.

Furthermore, “[t]he three strikes law requires that a triggering prior felony conviction be pleaded and proved. [Citations.] This means pleaded and proved in the current proceeding; the fact that the prior was a serious or violent felony need not have been pleaded or proved in the prior proceeding.” (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1525-1526.) Thus, it is not required that the current conviction be proved to be a serious or violent felony at this point. We also note that a trial court would not be authorized to use the current conviction as a prior strike in the future, since it could not be proved to be a serious or violent felony. (See §§ 1192.7, 1192.8, & 667.5.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MILLER
J.