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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAAC SEBASTION SOTELO,

Defendant and Appellant.

F067885

(Super. Ct. No. VCF227014A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Brett R. Alldredge, Judge.

Cheryl Rae Anderson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna, Leanne Le Mon, and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Franson, J. and Smith, J.

## **BACKGROUND**

The jury convicted defendant Isaac Sebastian Sotelo of second degree robbery (Pen. Code,<sup>1</sup> §§ 211, 212.5, subd. (c)) and resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1)). In a separate proceeding, the trial court found true allegations that he suffered a prior conviction, which constituted both a prior serious felony conviction (§ 667, subd. (a)) and a strike (§§ 667, subds. (b)-(i), 1170.12), and served three prior prison terms (§ 667.5, subd. (b)). The court imposed an aggregate 12-year sentence comprised of (1) a doubled middle term of six years on the robbery conviction; (2) a five-year prior serious felony enhancement; and (3) a single one-year prior prison term enhancement. It did not impose enhancements on the two remaining prior prison term allegations.

In a nonpublished opinion (*People v. Sotelo* (Mar. 19, 2013, F062642)),<sup>2</sup> we determined that the trial court committed two sentencing errors. First, the court failed to strike one of the remaining prior prison term allegations, which stemmed from the offense underlying the prior serious felony enhancement. Second, it failed to either impose the one-year enhancement on the other remaining prior prison term allegation or strike this allegation. Our disposition read:

“The sentence is vacated and the matter is remanded for resentencing. On resentencing, the trial court is directed to strike the prior prison term enhancement based on [defendant]’s conviction in Tulare County Superior Court case No. CR19480. The trial court is further directed to either strike or impose sentence on the other prior prison term enhancement on which the court did not impose sentence at the initial sentencing. If at resentencing the trial court strikes this latter enhancement, the court shall do so in compliance with ... section 1385. In all other respects the judgment is affirmed.”

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<sup>1</sup> Unless otherwise indicated, subsequent statutory citations refer to the Penal Code.

<sup>2</sup> On December 13, 2013, we granted defendant’s request for judicial notice of this opinion.

Following issuance of a May 20, 2013, remittitur,<sup>3</sup> the trial court filed a July 22, 2013, minute order, which read:

“NATURE OF PROCEEDINGS: Amended Sentencing order after appeal

“Pursuant to the appellate decision the sentencing dated May 10, 2011, is hereby amended to reflect, the two remaining [section] 667.5[, subdivision] (b)[,] allegations are stricken pursuant to [section] 1385.

“All other orders remain as set on May 10, 2011.”

Defendant filed an August 22, 2013, notice of appeal.

Thereafter, defendant moved to augment the appellate record to include clerk’s and reporter’s transcripts consisting of probation reports and all sentencing-related hearings, motions, and minute orders. In a November 25, 2013, order, we denied the motion “to the extent [defendant] seeks to augment the record with clerk’s and reporter’s transcripts related to his original May 10, 2011, sentencing.”<sup>4</sup> Defendant requested reconsideration. In a December 13, 2013, order, we granted the request and reaffirmed our ruling.

### **DISCUSSION**

“[W]hen an appellate court determines that error has occurred below, ... section[] 1260 ... grant[s] the reviewing court the authority to select among several dispositions ...” (*Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1254; accord, *People v.*

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<sup>3</sup> On April 10, 2014, we granted defendant’s request for judicial notice of this remittitur.

<sup>4</sup> Nonetheless, we ordered that the appellate record be augmented to include supplemental clerk’s and reporter’s transcripts consisting of “[a]ny sentencing-related oral proceedings conducted after the May 20, 2013, issuance of the remittitur” and “[a]ny sentencing-related minute orders and motions as well as any probation report, notice to [defendant], and amended abstract of judgment following the May 20, 2013, issuance of the remittitur.”

Defendant’s petition for Supreme Court review of our November 25, 2013, order was denied.

*Buckhalter* (2001) 26 Cal.4th 20, 35.) “A reviewing court’s remand for resentencing pursuant to ... section 1260 is but one of these available dispositions ....” (*Peracchi v. Superior Court, supra*, 30 Cal.4th at p. 1255.) “As a matter of practice, when a reviewing court identifies error relating solely to sentencing, it ordinarily does not reverse the judgment of conviction or remand for a new trial. Rather, typically, it simply remands for resentencing.” (*Ibid.*, italics omitted.) This “limited order ... does not disturb the verdict or even necessarily disturb the judgment and the sentence previously pronounced ....” (*Id.* at p. 1256.) Hence, “when a reviewing court determines that resentencing is necessary, it may remand the matter for resolution ... without requiring that the defendant once again be arraigned for imposition of judgment and sentencing.” (*Id.* at p. 1255; see *People v. Buckhalter, supra*, 26 Cal.4th at p. 35 [“[A] reviewing court has the power, when a trial court has made a mistake in sentencing, to remand with directions that do not inevitably require all of the procedural steps involved in arraignment for judgment and sentencing.”].)

Here, in the main section of our nonpublished opinion, we identified two discrete sentencing errors, but otherwise left defendant’s aggregate 12-year sentence intact. Our remand order limited the trial court’s jurisdiction solely to correcting the aforementioned errors. Contrary to defendant’s assertions, we did not intend to confer any discretion to “impose the low term of two years on [the] robbery conviction,” “strike the ... prior [strike] conviction enhancement,” and “strike [the single] prior prison term enhancement ....” Cognizant of its limited jurisdiction, the court properly refrained from modifying other aspects of the sentence in the July 22, 2013, minute order. (See *People v. Oppenheimer* (1965) 236 Cal.App.2d 863, 865-866 [“On remand with directions, after a judgment on appeal, the trial court has jurisdiction only to follow the directions of the appellate court; it cannot modify, or add to, those directions.”].) In view of the limited

remand, we reject defendant's contentions that the court should have held a resentencing hearing in his and his attorney's presence and obtained a supplemental probation report.<sup>5</sup>

**DISPOSITION**

The judgment is affirmed.

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<sup>5</sup> Defendant also contests the partial denial of his motion to augment the appellate record, alleging that he was unable to demonstrate prejudice resulting from the trial court's failure to hold a sentencing hearing in his presence. Since we found that the court was not required to hold such a hearing, this argument is rendered moot.