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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

NICOLAS HARRIS,

Defendant and Appellant.

H036908, H037667
(Santa Clara County
Super. Ct. No. 190602)

Defendant Nicolas Harris has filed two appeals arising from two resentencing proceedings in a case where a jury convicted him of stealing over \$150,000 by false pretenses from two elderly single men and then attempting to dissuade one of the victims from testifying against him. Considering four prior convictions for purposes of the Three Strikes law, the trial court resentenced defendant to 77 years to life, which generated appeal No. H036908. And, at a later hearing, it reimposed a \$10,000 restitution fine and a \$276 booking fee, which generated appeal No. H037667. Defendant contends that the trial court erred by failing to entertain a *Romero*¹ motion and reimposing the fine and fee. We ordered the appeals considered together for the purpose of briefing, oral argument, and disposition. The People concede that the matter should be remanded for a *Romero*

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (motion to dismiss prior convictions).

hearing. And we agree that the concession is appropriate. We therefore reverse the judgment and remand for resentencing.

BACKGROUND

At defendant's original sentencing hearing, the trial court denied defendant's *Romero* motion, sentenced defendant to 77 years to life, and imposed a \$10,000 restitution fine and \$276 booking fee. After we affirmed defendant's convictions (*People v. Miller* (2000) 81 Cal.App.4th 1427), defendant filed a habeas corpus petition in federal district court. The federal court granted partial relief by ruling that insufficient evidence supported one of the counts. On remand, defendant sought to replace appointed counsel with private counsel because appointed counsel wished to argue that the trial court had no jurisdiction to resentence defendant (because 60 days had passed since the federal court ordered resentencing within 60 days) rather than make another *Romero* motion, which would recognize jurisdiction. The trial court denied defendant's motion to substitute counsel and concluded that the federal court order addressed the dismissal of one count and did not allow for another *Romero* motion. It then dismissed the count and imposed a sentence on another count that had originally been stayed to arrive at the original 77-years-to-life sentence. It did not reimpose the restitution fine or booking fee until a later hearing after the omission was brought to its attention.

DISCUSSION

Defendant contends that the trial court erred by denying his motion to replace appointed counsel and he received ineffective assistance of counsel because appointed counsel failed to make a *Romero* motion. In any event, the record is clear that the trial court believed that it had no discretion to entertain a *Romero* motion. Both parties agree on the applicable legal principles.

“When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is

justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components. The invalidity of one component infects the entire scheme.” (*People v. Hill* (1986) 185 Cal.App.3d 831, 834.)

The trial court should have therefore entertained a *Romero* motion.

“*Romero* establishes that where the record *affirmatively* discloses that the trial court *misunderstood* the scope of its discretion, remand to the trial court is required to permit that court to impose sentence with full awareness of its discretion as clarified in *Romero*.” (*People v. Fuhrman* (1997) 16 Cal.4th 930, 944.)

We must therefore remand for resentencing.

Defendant claims that double jeopardy principles bar the reimposition of the restitution fine and booking fee. This argument appears to be inconsistent with the principle that reversal of the judgment for resentencing reopens the entire sentencing scheme. In any event, defendant is free to advance his argument in the trial court.

The parties also agree that the trial court erred in calculating certain custody credits. They are free to clarify the issue for the trial court at resentencing.

DISPOSITION

The judgment is reversed. The matter is remanded for resentencing.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.