

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	Supreme Court
Plaintiff and Respondent,)	No. S263375
)	
v.)	Court of Appeal
)	No. B297213
MARIO SALVADOR PADILLA,)	
)	Superior Court
Defendant and Appellant.)	No. TA051184
_____)	

APPEAL FROM THE SUPERIOR COURT
OF LOS ANGELES COUNTY
Honorable Ricardo R. Ocampo, Judge

APPELLANT’S ANSWER

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**TO THE HONORABLE TANI CANTIL-SAKAUYE,
CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:**

Appellant respectfully submits this Answer to respondent’s petition for review, pursuant to California Rules of Court, rule 8.500(a)(2).

ARGUMENT

I. THE PETITION FOR REVIEW SHOULD BE DENIED BECAUSE THE ISSUE PRESENTED FOR REVIEW HAS LITTLE OR NO RELEVANCE TO THIS CASE AND BECAUSE THERE IS NO CONFLICT IN THE CASE LAW ARISING FROM THE COURT OF APPEAL'S HOLDING IN THIS CASE

In its petition for review, respondent frames the issue presented for review as whether the assumption of retroactivity addressed in *In re Estrada* (1965) 63 Cal.2d 270 applies “when a judgment was final before the ameliorative change in the law but is later altered or amended for a reason unrelated to the new law?” (PFR at p. 5.) In so framing the issue, respondent has presented a question that appears to have little or no relevance to this case.

Here, appellant's sentence was *vacated* by the superior court in 2014. (See *People v. Padilla* (2020) 50 Cal.App.5th 244, 248.) As the court of appeal explained: “We begin with the simple observation that appellant's sentence is not final: the superior court vacated his original sentence and resentenced him, we then reversed his new sentence and remanded for another resentencing, and appellant has taken this direct appeal from his second resentencing. Because appellant's sentence is still pending on direct appeal, his judgment is not final under our Supreme Court's definition of finality for retroactivity purposes.” (*Id.* at pp. 253-254.) Thus, this is not a case in which the judgment has been merely “altered or amended” (PFR at p. 5),

but rather one in which it might be more apt to say that the judgment has been ‘replaced.’

The distinction is not without significance. In *People v. Federico* (2020) 50 Cal.App.5th 318, the defendant’s 20-year determinate sentence was recalled pursuant to Penal Code section 1170, subdivision (d)(1), after the CDCR sent a letter advising the trial court that one part of the sentence (additional prison terms imposed for two overlapping enhancements) was unauthorized. Pursuant to the ‘full resentencing rule’ discussed by this Court in *People v. Buycks* (2018) 5 Cal.5th 857, 893-894, the trial court recalculated Federico’s entire sentence, eliminating the unauthorized part of the sentence, resulting in an aggregate determinate sentence of 17 years. (*Federico, supra*, 50 Cal.App.5th at pp. 322-323.)

On appeal, the *Federico* court rejected Federico’s claim that he was entitled to a transfer hearing pursuant to Proposition 57 because the recall of his sentence rendered the judgment in his case nonfinal. As the *Federico* court explained, “even if a trial court has authority to recall a sentence under section 1170, subdivision (d), it does not follow that the sentence is not a final judgment under *Estrada*. . . . Contrary to defendant’s claim, section 1170, subdivision (d), says nothing about ‘reopening’ a judgment that has been final for years, in order to apply recently enacted laws retroactively. Moreover, remanding the case to the juvenile court for a fitness hearing pursuant to Proposition 57 would certainly not comply with the language of section 1170, subdivision (d).” (50 Cal.App.5th at pp. 326-327.)

The *Federico* court’s analysis is consistent with this Court’s observation that “recall of . . . a sentence does not restore a convicted felon to presentence status.” (*People v. Johnson* (2004) 32 Cal.4th 260, 268.) In *Johnson*, this Court considered whether the recall of a sentence pursuant to Penal Code section 1170, subdivision (d), returns the defendant to a pre-sentencing status that would entitled him or her to pre-sentence custody credits. In rejecting Johnson’s claim, this Court explained: “The trial court here recalled the sentence solely for correction of a prison sentence already in progress and reimposed a state prison sentence at the recall hearing. As with an appellate remand solely for correction of a sentence already in progress, a recall of sentence does not remove a prisoner from the Director’s custody or restore the prisoner to presentence status as contemplated by section 4019.” (*Id.* at p. 267.) As this Court further observed, “a recall under section 1170, subdivision (d), does not necessarily modify the judgment or render it invalid; a trial court may reimpose the same judgment after a recall of sentence.” (*Id.* at p. 268.)

Federico may indeed present a case in which the judgment has been, as respondent puts it, merely “altered or amended” (PFR at p. 5) as opposed to vacated and replaced. As respondent acknowledges (PFR at p. 13), the *Federico* court rejected Federico’s claim that the recall of his sentence rendered the judgment in his case nonfinal. (*Federico, supra*, 50 Cal.App.5th at p. 326 [“The fact that he could appeal the court’s decision made on February 26, 2019 (the instant appeal) does not render the

2008 judgment not final”].) Here, by contrast, appellant’s original sentence was vacated, rendering the judgment in his case nonfinal. (See *Jimenez v. Quarterman* (2009) 555 U.S. 113, 119-120 [129 S.Ct. 681, 172 L.Ed.2d 475] [a judgment that has become final may become non-final once again if reopened]; *People v. Garcia* (1995) 32 Cal. App. 4th 1756, 1769 [“The first sentence had been vacated—for good reason It was a nullity. The trial court properly resentenced defendant ‘from scratch’ ”].)

Respondent characterizes *Federico* and this case as mutually incompatible, warranting review by this Court in order “to resolve a conflict in the decisions of the Courts of Appeal.” (PFR at pp. 12-13.) It does not appear, however, that the holdings in *Federico* and this case are in conflict. This case does not involve the recall of a sentence pursuant to Penal Code section 1170, subdivision (d), but rather the vacatur of a sentence that was held unconstitutional. Respondent acknowledges that “the two cases involved different reasons for resentencing” (PFR at p. 13), and as the analyses in the two decisions make clear, that difference was determinative with respect to the finality of the judgment in each case.

As this and other courts have observed, whether the finality of the judgment is affected by a change in sentence depends generally on the statutory or constitutional basis for the resentencing. (Cf. *Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1254-1255 [“when an appellate court determines that error has occurred below, Penal Code sections 1260 and 1262 grant the

reviewing court the authority to select among several dispositions, including but *not limited to* reversal of the judgment and the granting of a new trial. A reviewing court’s remand for resentencing pursuant to Penal Code section 1260 is but one of these available dispositions and does not necessarily involve (or itself constitute) a reversal of the judgment”]; *Johnson, supra*, 32 Cal.4th at p. 268 [“a recall under section 1170, subdivision (d), does not necessarily modify the judgment or render it invalid”]; *People v. Johnson* (2019) 32 Cal.App.5th 938, 942 [“Appellant’s subsequent habeas petitions and motions do not extend the date on which his judgment became final for purposes of Senate Bill No. 620 because, although he sought it, appellant did not ‘obtain[] collateral relief by way of a state or federal habeas corpus proceeding’ ”].)

To compare *Federico* with this case is, thus, to compare apples and oranges, and their respective holdings do not appear to present a conflict in the case law. Review of whether *Federico* was correctly decided would presumably require an examination of the language and legislative intent found in Penal Code section 1170, subdivision (d), raising issues of no relevance to this case. On the other hand, “whether the *Estrada* presumption should extend to a judgment that was final after initial review but is ‘reopened’ through alteration or amendment—for example, on habeas corpus, as in this case— after the enactment of an ameliorative law,” a separate issue raised in respondent’s petition (PFR at p. 9), seems of questionable relevance to cases impacted by the holding in *Federico*.

Respondent's petition thus raises a mishmash of different questions, perhaps related thematically in terms of a defendant's eligibility for a transfer hearing, but ultimately addressing separate and distinct issues, including the finality of judgments in criminal cases, whether *Estrada* applies to cases in which the judgment has been 'reopened,' and the language and legislative intent of laws not implicated in this case. The application of the *Estrada* rule because the judgment has been reopened is certainly part of the Court of Appeal's holding in this case. But respondent's characterization of this case as "a significant expansion" of *Estrada* with "broad" and "substantial" importance that could "generate confusion and inconsistency" (PFR at pp. 11, 12, 13) brings unwarranted focus on a relatively straightforward aspect of the Court of Appeal's holding that, to the extent it is invoked as controlling precedent in future cases, is not in conflict with other court of appeal cases and does not appear to depart in any substantial way from this Court's jurisprudence on this issue.

CONCLUSION

For all the reasons set forth above, respondent's petition for review should be denied.

Respectfully Submitted,

Dated: August 6, 2020

JONATHAN E. DEMSON
Attorney for Appellant

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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.360(b)(1) of the California Rules of Court, appellant certifies that his Answer filed in connection with the above-captioned matter consists of approximately 1,793 words, as determined by using the “word count” feature of the Microsoft Word program used in drafting the brief.

Respectfully Submitted,

Dated: August 6, 2020

JONATHAN E. DEMSON
Attorney for Appellant

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.**
PADILLA

Case Number: **S263375**

Lower Court Case Number: **B297213**

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Jonathan E. Demson, Attorney at Law

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