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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. STONEY ALLEN ANDERSON, Defendant and Appellant.	C090268 (Super. Ct. No. 17F3799, 18F8075, 19F1009)

A trial court sentenced defendant Stoney Allen Anderson to 13 years eight months in state prison, including one year for a prior prison term enhancement, and imposed various fines and fees. At the time of sentencing, defendant claimed inability to pay based on *People v. Dueñas* (2019) 30 Cal.App.5th 1157.

On appeal, defendant contends the prior prison term enhancement should be vacated based on the retroactive application of Senate Bill No. 136 (2019-2020 Reg. Sess.), which the Attorney General concedes. Defendant also asks we remand this matter

for the trial court to reassess his ability to pay the assessed fines and fees. We will strike the prior prison term enhancement, remand the case for resentencing, and otherwise affirm the judgment.

BACKGROUND

This appeal involves three different cases. In case No. 17F3799, defendant pleaded no contest to inflicting corporal injury on a dating partner (Pen. Code, § 273.5, subd. (a); count one)[1] and assault with a deadly weapon (§ 245, subd. (a)(1); count two). In case No. 18F8075, a jury found defendant guilty of two counts of inflicting corporal injury on a dating partner. (§ 273.5, subd. (a); counts one and two.) The court found true an allegation of a prior prison term for a 2012 conviction for receiving a stolen motor vehicle (§ 496, subd. (d)) under section 667.5, subdivision (b). The court also found true multiple allegations of prior convictions in case No. 17F3799. In case No. 19F1009, defendant pleaded no contest to one misdemeanor count of preventing or dissuading a witness from testifying. (§ 136.1, subd. (a)(1).)

The trial court sentenced defendant to an aggregate term of 13 years eight months in state prison, including one year for the prior prison term enhancement. The court then continued sentencing to address defendant's credits and also his "ability to pay" the "statutory fines and fees," which issue defense counsel confirmed she would "reserve [] for the home court." The court then indicated that "the issue of fines and fees [to] be imposed will also be addressed at the home court."

At the subsequent hearing, before a different judge, no mention of imposition of fines and fees was made except that defense counsel indicated (without reference to any document) that she "wanted to argue about the $30 fine and $300 restitution fine as well." The court then raised the *Dueñas* case, commenting that it was "remarkably unique" and

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[1] Undesignated statutory references are to the Penal Code.

that defendant was "quite capable of earning sufficient income in [prison]." The court found defendant "can pay those fines and fees" but did not reference any document it might have been discussing. Nor did the court actually impose any fines or fees or even incorporate by reference any list or other writing that might have listed the fines and fees to be imposed, such as the probation report.

Thus, despite the fact that the minutes and abstract of judgment reference multiple imposed fines and fees, none were actually imposed.

DISCUSSION

I

Prior Prison Term Enhancement

Defendant contends, and the People agree, that recently enacted Senate Bill No. 136, which limits the prior offenses that qualify for a prior prison term enhancement under section 667.5, subdivision (b), applies retroactively to his case. We agree with the parties.

On October 8, 2019, the Governor signed Senate Bill No. 136, which amended section 667.5, effective January 1, 2020 (Stats. 2019, ch. 590, § 1). Senate Bill No. 136 narrowed eligibility for the one-year prior prison term enhancement to those who have served a prior prison sentence for a sexually violent offense. The amended provision states, in relevant part: "Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail

custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended." (§ 667.5, subd. (b).)

Defendant's prior prison term at issue was not for a sexually violent offense. Defendant is therefore entitled to the ameliorative benefit of the statute if Senate Bill No. 136 is applied retroactively.

Whether a particular statute is intended to apply retroactively is a matter of statutory interpretation. (See *People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 307 [noting " 'the role of a court is to determine the intent of the Legislature' "].) Generally speaking, new criminal legislation is presumed to apply prospectively unless the statute expressly declares a contrary intent. (§ 3.) However, where the Legislature has reduced punishment for criminal conduct, an inference arises under *In re Estrada* (1965) 63 Cal.2d 740 " 'that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.' " (*Lara*, at p. 308.) "A new law mitigates or lessens punishment when it either mandates reduction of a sentence or grants a trial court the discretion to do so." (*People v. Hurlic* (2018) 25 Cal.App.5th 50, 56.)

Senate Bill No. 136 narrowed who was eligible for a section 667.5, subdivision (b) prior prison term enhancement. There is nothing in the bill or its associated legislative history that indicates an intent that the court not apply this amendment to all individuals whose sentences are not yet final. Under these circumstances, we find that *In re Estrada*'s inference of retroactive application applies. (Accord, *People v. Lopez* (2019) 42 Cal.App.5th 337, 340-342 [Sen. Bill No. 136 applies retroactively to cases not yet final on appeal]; *People v. Jennings* (2019) 42 Cal.App.5th 664, 680-682 [same].)

Because the trial court imposed less than the maximum sentence, we remand the matter for full resentencing to allow the court to exercise its discretion in light of the changed circumstances. (See *People v. Lopez, supra*, 42 Cal. App.5th at p.

342; *People v. Buycks* (2018) 5 Cal.5th 857, 896, fn. 15.) While the trial court is entitled to reconsider its entire sentencing scheme, defendant may not be sentenced to a term in excess of his original sentence. (See *People v . Burns* (1984) 158 Cal.App.3d 1178, 1184.)

II

Ability to Pay

Relying on *Dueñas*, defendant argues due process requires that all imposed fees and fines be reversed pending an ability to pay hearing. The Attorney General counters that the court addressed ability to pay before it imposed the challenged fines and fees. Both parties cite to the minute order and abstract of judgment on their briefing. Neither party notes that the fines and fees were never actually orally imposed.

The trial court should evaluate whether it is necessary to impose any fines, fees, and assessments when sentencing defendant on remand. The parties may raise any objections that they may deem appropriate. The trial court is reminded that the sentence should not include any non-mandatory punitive components that were not included in the original sentence. (See *People v . Burns*, *supra*, 158 Cal.App.3d at p. 1184; see also *People v. Hanson* (2000) 23 Cal.4th 355, 363-364.)

DISPOSITION

We modify the judgment to strike defendant's section 667.5, subdivision (b) prior prison term enhancement. The case is remanded for resentencing so the trial court may exercise its discretion in resentencing defendant and imposing any appropriate fines, fees, and assessments in a manner consistent with this opinion. In all other respects, the judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Mauro, Acting P. J.

/s/
Renner, J.