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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTINO ESTRADA,

Defendant and Appellant.

B287061

(Los Angeles County
Super. Ct. No. SA086426)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elden S. Fox, Judge. Remanded with directions.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Justino Estrada, previously convicted of first degree murder and two counts of attempted premeditated murder, appeals the sentence imposed at his resentencing hearing. Due to a change in state law, we again remand the matter for resentencing, at which time the other sentencing issues Estrada raises may be addressed.

FACTUAL AND PROCEDURAL BACKGROUND

Estrada was convicted of the first degree murder of Brandon Grayson (Pen. Code,¹ § 187) and two counts of attempted premeditated murder (§ 664/187). The jury found true the allegations that all the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang within the meaning of section 186.22, subdivision (b)(1)(C) and that for each offense Estrada personally and intentionally discharged a firearm, causing great bodily harm and injury to the victims within the meaning of section 12022.53, subdivision (d).

In Estrada's previous appeal, we affirmed his convictions but remanded the matter for resentencing. (*People v. Estrada* (Aug. 7, 2017, B267634) [nonpub. opn.].) Additionally, we noted that the abstract of judgment erroneously listed a \$41 fine pursuant to section 1202.5 that should be omitted from the subsequent abstract of judgment. (*People v. Estrada* (Aug. 7, 2017, B267634) [nonpub. opn.].)

Estrada was resentenced in November 2017. The trial court sentenced Estrada to a term of 25 years to life for the murder conviction, count 1, plus a consecutive 25 years to life for

¹ All further statutory references are to the Penal Code.

the firearm enhancement. For one attempted murder conviction, count 2, the court imposed a life sentence with a minimum parole eligibility period of 15 years plus a term of 25 years to life for the firearm enhancement, running consecutively to the sentence on count 1. For the other attempted murder conviction, count 3, the court also imposed a life sentence with a minimum parole eligibility period of 15 years plus a term of 25 years to life for the firearm enhancement, but it ordered this sentence to run concurrently with the sentences on counts 1 and 2. Estrada again appeals.

DISCUSSION

I. Senate Bill No. 620

At resentencing, the trial court sentenced Estrada to an additional 25 years to life in prison on each count because he personally and intentionally discharged a firearm, causing great bodily injury. (§ 12022.53, subd. (d).) At the time of resentencing, section 12022.53, subdivision (h), prohibited the court from striking this firearm enhancement, and section 12022.53, subdivision (f), required the court to impose it. Senate Bill No. 620, which went into effect on January 1, 2018, gives the trial court new discretion to strike a firearm enhancement under section 12022.53: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (§ 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2.) Estrada contends, the People concede, and we agree the new law applies retroactively to this case. (See *People v. Conley* (2016) 63 Cal.4th 646, 656.) As there is no indication in the record that it

would be futile to remand to allow the trial court to determine whether to strike the firearm enhancements previously imposed under section 12022.53, remand for resentencing is appropriate.

II. Additional Sentencing Issues

A. Opportunity to Present Evidence for Future Youth Offender Parole Hearing

Estrada, who was 18 years old when he committed the instant offenses, contends that pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 he is entitled to a limited remand so that he may present evidence relevant to his eventual youth offender parole hearing under section 3051. The Attorney General argues that Estrada, who was resentenced well after the decision in *Franklin* and the enactment of section 3051, forfeited this claim by failing to present any such evidence at his resentencing hearing. We need not resolve this issue because Estrada must be sentenced anew in light of Senate Bill No. 620. Should Estrada wish to present evidence in the superior court about his youth-related characteristics as a juvenile offender, he may present that evidence at his new sentencing hearing.

B. Error on Abstract of Judgment

In Estrada's prior appeal, we observed that the abstract of judgment incorrectly listed a \$41 fine pursuant to section 1202.5 that the court did not orally impose, and could not have imposed, at sentencing. (*People v. Estrada* (Aug. 7, 2017, B267634) [nonpub. opn.].) Although the trial court expressly stated at the resentencing hearing that this fine was to be omitted from the new abstract of judgment, the error was nonetheless repeated on the operative abstract of judgment. We again note this issue so that it may be addressed on remand.

DISPOSITION

The matter is remanded to the trial court for resentencing. The superior court is then directed to prepare a corrected abstract of judgment and to forward a certified copy of the abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.