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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIEAN ISIAH JOHNSON,

Defendant and Appellant.

B290319

(Los Angeles County  
Super. Ct. No. NA102812)

APPEAL from the judgment of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed in part and remanded for resentencing.

Lindsey M. Ball, 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, David E. Madeo and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Adriean Isiah Johnson challenges his conviction on two counts of second degree robbery. He raises only a sentencing issue, arguing he is entitled to a remand for resentencing in light of the passage of Senate Bill No. 1393 during the pendency of this appeal.

We affirm the judgment of conviction, but remand for resentencing to allow the trial court the opportunity to exercise its newly granted sentencing discretion under Penal Code section 667, subdivision (a)(1).

Within the span of two days in September 2015, defendant committed two robberies. On September 13, defendant stole several items from a gas station convenience store, knocking down the gas station attendant as he fled. On September 15, defendant leapt over the counter at a doughnut shop, stole \$300 from under the cash register, among other items, and then fled the scene.

Defendant was charged by information with two counts of robbery (Pen. Code, § 211). It was further alleged defendant had suffered a prior felony conviction within the meaning of section 667, subdivision (a)(1) and the “Three Strikes” law. The case proceeded to a jury trial in March 2018.

The jury found defendant guilty as charged. In a bifurcated proceeding, defendant admitted his prior strike. Defendant also admitted violating the terms of probation in a separate case (No. SA079466).

The court sentenced defendant to a state prison term of 18 years four months, calculated as follows: the upper term of five years on count 1, the base term, doubled due to the prior strike; a consecutive one-year term on count 2 (one-third the midterm), doubled due to the prior strike; a consecutive five-year

term pursuant to Penal Code section 667, subdivision (a)(1); and a consecutive 16-month term for the probation violation.

Defendant's sentencing hearing was held prior to the enactment of Senate Bill No. 1393. At the time, imposition of a consecutive five-year term pursuant to Penal Code section 667, subdivision (a)(1) for a prior felony conviction was mandatory.

In September 2018, during the pendency of this appeal, the Governor signed Senate Bill No. 1393 (2017-2018 Reg. Sess.). As relevant here, the bill amended provisions of Penal Code section 667 and section 1385, giving trial courts discretion to strike a prior serious felony conviction in connection with imposition of the five-year enhancement set forth in section 667, subdivision (a)(1). (Stats. 2018, ch. 1013, § 1, § 2.) The new provisions became effective January 1, 2019.

In *In re Estrada* (1965) 63 Cal.2d 740, 744-745, the California Supreme Court held that, absent evidence of contrary legislative intent, it is an "inevitable inference" that the Legislature meant for new statutes that reduce the punishment for certain prohibited acts to apply retroactively to every case not yet final on appeal.

It is undisputed defendant's appeal was not final as of the date Senate Bill No. 1393 became effective and defendant is therefore entitled to the benefit of the amendatory provision. Defendant contends, and respondent concedes, that remand for resentencing is appropriate here. (See, e.g., *People v. Garcia* (2018) 28 Cal.App.5th 961, 973.)

We agree and remand for resentencing to allow the trial court the opportunity to exercise its newly granted sentencing discretion pursuant to Senate Bill No. 1393. The trial court shall consider the factors enumerated in California Rules of Court,

rule 4.428(b) in making its determination whether to strike, dismiss or impose the five-year enhancement. We express no opinion on how the court should exercise its discretion.

**DISPOSITION**

We remand for resentencing to allow the trial court the opportunity to exercise its discretion pursuant to Penal Code section 667, subdivision (a)(1). After resentencing, the superior court is directed to prepare and transmit an abstract of judgment to the Department of Corrections and Rehabilitation.

The judgment of conviction is affirmed in all other respects.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.