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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON SHANE SOUND,

Defendant and Appellant.

B288501

(Los Angeles County
Super. Ct. No. MA071973)

APPEAL from a judgment of the Superior Court for Los Angeles County, Kathleen Blanchard, Judge. Affirmed in part and remanded for resentencing.

Quinn & Dworakowski and Stephane Quinn, 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, Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jason Shane Sound appeals from a judgment sentencing him to 12 years in prison; the sentence includes a five-year enhancement under Penal Code section 667, subdivision (a)(1) for a prior serious felony conviction. He raises a single issue on appeal, contending that the matter must be remanded for resentencing in light of Senate Bill No. 1393 (SB 1393), to allow the trial court to exercise its discretion regarding whether to strike that prior serious felony conviction enhancement.

BACKGROUND

Because defendant's appeal is limited to a single legal issue—whether SB 1393 applies to him and requires remand for resentencing, we do not include a detailed discussion of the evidence presented at trial. Suffice it to say that defendant was seen on video taking merchandise from two Walmart stores; in addition, evidence was presented that defendant threatened a Walmart loss control officer when he accused defendant of stealing and followed defendant out of the store.

A jury found defendant guilty of second degree robbery (Pen. Code,¹ § 211, count 1), criminal threats (§ 422, subd. (a), count 2), and misdemeanor shoplifting (§ 459.5, count 3), but found an allegation that defendant had personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)) was not true. After the jury's verdicts, defendant admitted that he suffered one prior serious conviction (§ 667, subd.

¹ Further undesignated statutory references are to the Penal Code.

(a)(1)), one prior serious or violent felony conviction under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and served three prior prison terms (§ 667.5, subd. (b)). The trial court sentenced defendant to a term of 12 years in prison, computed as follows: the middle term of three years on count 1, doubled under the Three Strikes law, plus five years for the serious felony prior (§ 667, subd. (a)(1)), and one year for one prior prison term; the court struck the remaining two prior prison term enhancements.²

DISCUSSION

When defendant was sentenced in February 2018, section 1385 expressly stated that the trial court was not authorized to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under section 667. (Former § 1385, subd. (b).) Effective January 1, 2019, SB 1393 amended section 1385 to remove the prohibition against striking prior convictions under section 667. Thus, trial courts now have the discretion to strike prior convictions under section 667 if the requirements in section 1385 are met.

Defendant contends that the amended section 1385 applies retroactively to him, and the matter must be remanded so that the trial court may have an opportunity to exercise its discretion in determining whether to strike the prior conviction enhancements imposed under section 667, subdivision (a)(1). The Attorney General concedes that

² The sentence on count 2 was stayed under section 654. The court also imposed a 180-day sentence on count 3, to be served concurrently with the sentence on count 1.

defendant is entitled to a resentencing hearing for this purpose. We agree.

In the analogous situation involving the enactment of Senate Bill No. 620, which gave the trial court discretion to strike firearm enhancements under section 12022.5 and 12022.53, courts have held that a remand to allow the trial court to exercise that discretion “is required unless the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so. [Citation.] Without such a clear indication of a trial court’s intent, remand is required when the trial court is unaware of its sentencing choices.” (*People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110; see *People v. McDaniels* (2018) 22 Cal.App.5th 420, 426-428; *People v. Chavez* (2018) 22 Cal.App.5th 663, 713.)

Here, there is no clear indication with regard to the trial court’s intent as to striking defendant’s section 667, subdivision (a) prior. Therefore, the appropriate course is to remand the case for the court to decide whether to exercise its newly enacted discretion. We express no opinion on how the court should rule. We note only: (1) the court’s decision must be “in strict compliance with section 1385[, subdivision] (a)” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530), and (2) under the full resentencing rule, should the court decide to strike the section 667, subdivision (a) prior, it is entitled to reconsider its other prior sentencing choices (see *People v. Buycks* (2018) 5 Cal.5th 857, 893).

DISPOSITION

The convictions are affirmed. The matter is remanded for the trial court, at a proceeding at which defendant is present and represented by counsel (unless waived), to exercise its discretion whether to strike the section 667, subdivision (a) enhancement. In all other respects, the judgment is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.