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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.

ANTHONY J. SALDANA,

Defendant and Appellant.

B292736

(Los Angeles County
Super. Ct. No. VA135326)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Poras, Judge. Affirmed and remanded with directions.

Marilee Marshall, 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, Stephanie C. Brenan and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found appellant Anthony Saldana guilty of assault with a firearm, shooting at an inhabited dwelling and possession of a firearm by a felon. Gang and firearm allegations were also found to be true. In a prior appeal (*People v. Saldana* (Feb. 21, 2018, B280748) [nonpub. opn.]), we vacated one of the gang enhancements but otherwise affirmed the judgment. We also remanded for resentencing to correct an error in the imposition of the gang enhancement and to permit the trial court to exercise its new discretion to strike or impose the firearm enhancements pursuant to Senate Bill No. 620.

The trial court resentenced appellant. Appellant raises three issues in this appeal with respect to his new sentence: 1) he is entitled to a remand pursuant to Senate Bill No. 1393 to permit the trial court to exercise its new discretion to strike or impose the serious felony enhancement imposed under Penal Code section 667, subdivision (a)(1); 2) the court erred in imposing fines, fees, and assessments without conducting an ability-to-pay hearing under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*); and 3) on remand the trial court abused its discretion in declining to strike the firearm enhancements imposed under Penal Code sections 12022.5, subdivision (a) and 12022.53, subdivision (c). (All further references to code sections are to the Penal Code unless otherwise noted.)

I. Remand under Senate Bill No. 1393

Appellant's sentence includes two 5-year enhancements under section 667, subdivision (a)(1) based on a prior serious felony conviction. When appellant was sentenced, trial courts had no authority to strike enhancements proven or admitted under section 667, subdivision (a)(1). Effective January 1, 2019, Senate Bill No. 1393 (2017–2018 Reg. Sess.), permits trial courts to exercise their discretion to strike or impose such enhancements. (Stats. 2018, ch. 1013, §1.) Because appellant's judgment is not yet final, the new law applies retroactively. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973 [Senate Bill No. 1393 will apply retroactively upon its effective date].)

The People concede, and we agree, that Senate Bill No. 1393 applies to appellant's sentence and that a remand is appropriate to permit the court to exercise its discretion. We state no opinion on how the court should exercise its discretion.

II. We Decline to Address Fines, Fees, and Assessments under *Dueñas*

Appellant was sentenced to state prison for 75 years to life, plus 50 years. The trial court imposed five \$40 court operations assessments (§ 1465.8), five \$30 court facilities assessments (Gov. Code, § 70373), and a \$5,000 restitution fine (§ 1202.4). Relying on *Dueñas*, appellant contends these fees, fines, and assessments should not have been imposed without an ability-to-pay hearing. *Dueñas, supra*, 30 Cal.App.5th at pp. 1172–1173. *Dueñas* errors are waived absent an objection. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1154.)

Moreover, California law provides that an attempt to correct errors in the imposition of fines and fees must be made first to the sentencing court before it can be raised on appeal. (§ 1237.2; *People v. Aguilar* (2015) 60 Cal.4th 862, 864 [failure to raise challenge to fees in the trial court precludes consideration of issue on appeal].) Appellant has not raised the issue in the trial court; we therefore decline to consider the issue. On remand, appellant can raise the issue in the trial court if he so chooses. (*People v. Burbine* (2003) 106 Cal.App.4th 1250, 1259 [upon resentencing, the trial court may modify “every aspect” of the sentence]; *People v. Hill* (1986) 185 Cal.App.3d 831, 834 [“When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme.”].)

III. We Decline to Address The Firearm Enhancements

On remand, the trial court exercised its discretion under Senate Bill No. 620 and reimposed both firearm enhancements, which appellant argues was an abuse of discretion. We decline to address the issue. On remand, the trial court will have the discretion to reconsider the entire sentence, including these enhancements imposed under sections 12022.5, subdivision (a) and section 12022.53, subdivision (c). (See *People v. Burbine*, *supra*, 106 Cal.App.4th at p. 1259.)

DISPOSITION

The judgment is affirmed. The matter is remanded with directions to the trial court to exercise its discretion under Senate Bill No. 1393. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 34–35.) At the remand hearing, the defendant has the right to the assistance of counsel, and unless he chooses to forgo it, the right to be present. (*People v. Rodriguez* (1998) 17 Cal.4th 253, 258-260.)

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STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.