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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

NOE HERNANDEZ,

Defendant and Appellant.

B285819

(Los Angeles County
Super. Ct. No. BA395711)

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry J. Hall, Judge. Affirmed in part and conditionally reversed with directions.

Tracy J. Dressner, 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, Marc A. Kohm and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Noe Hernandez (appellant) was convicted and sentenced to 15 years to life as to one count of murder and three counts of attempted murder. Additionally, as to each count, he received a firearm enhancement of 25 years to life pursuant to Penal Code section 12022.53, subdivision (d).¹ The 10-year and the 20-year enhancements under section 12022.53, subdivisions (b) and (c) were stayed.

In this appeal, appellant seeks a new sentencing hearing in light of Senate Bill No. 620 (SB 620), a bill that amended section 1385, subdivision (h) and gave trial courts the discretion to strike firearm enhancements pursuant to section 12022.53. We conditionally reverse the firearm enhancements and remand the matter to the trial court to determine whether to strike any or all of the enhancements. If the trial court does not strike any of the enhancements, then the enhancements shall be reinstated as originally imposed or stayed. In all other respects, the judgment is affirmed.

FACTS

In *People v. Hernandez* (June 13, 2017, B262261) (nonpub. opn.) at pp. 2–3 (*Hernandez I*), we affirmed appellant’s convictions on one count of murder and three counts of attempted murder. (*Hernandez I, supra*, pp. 2–3, 45.) However, because the trial court did not specify whether the sentences for counts 2 through 4 were to run consecutively or concurrently to the sentence for count 1, we remanded the matter for the trial court to conduct a new sentencing hearing and make a determination. Subsequently, on October 16, 2017, the trial court conducted a

¹ All further statutory references are to the Penal Code unless otherwise indicated.

new sentencing hearing and specified that the sentences on all counts were to run consecutively.

Appellant filed this appeal.

On January 1, 2018, SB 620 became effective. SB 620 is the sole issue that this appeal addresses.

DISCUSSION

Section 12022.53, subdivision (h) was amended by SB 620 and now reads in part: “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 in this subdivision applies to any resentencing that may occur pursuant to any other law.”

Because appellant’s judgment was not yet final when SB 620 took effect, the amendment applies to appellant retroactively. (*People v. Woods* (2018) 19 Cal.App.5th 1080, 1090–1091.) Thus, “remand is appropriate in this case to allow the trial court to exercise its discretion as to whether to strike the firearm enhancement[s].” (*Id.* at p. 1091.)

The People suggest that remand is unnecessary because the trial court’s comments during the October 16, 2017, sentencing hearing demonstrate that it would not strike any of the firearm enhancements. We disagree. The trial court did not have the power to strike the firearm enhancements at that hearing, so it could not have exercised its discretion. Remand is necessary so the trial court can exercise its newly granted discretion one way or the other.

DISPOSITION

The firearm enhancements are conditionally reversed. They are remanded to the trial court to determine whether any or all of them should be stricken. If the trial court does not strike any of the enhancements, then the enhancements shall be reinstated as originally imposed or stayed. In all other respects, the judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT