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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RENOIR VINCENT VALENTI,

Defendant and Appellant.

B276311

Los Angeles County
Super. Ct. No. MA057051

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed with directions.

Richard D. Miggins, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Renoir Vincent Valenti appeals from the judgment entered after he was resentenced for various forms of child sex abuse in accordance with our remand order in his first appeal. After appellate counsel filed a brief in which he raised no issues and asked us to review the record independently under *People v. Wende* (1979) 25 Cal.3d 436, defendant submitted a supplemental brief raising defects in his original conviction and appeal and asserting facts that have never been before this court. We have reviewed the entire record and defendant's supplemental brief and have found no arguable appellate issues. As our review of the record revealed several errors in the amended abstracts of judgment, however, we affirm with directions to correct them.¹

PROCEDURAL BACKGROUND

On February 27, 2014, defendant was convicted of 20 counts of child molestation, forgery, and violating a court order arising from his sexual abuse of 15 children over nearly 30 years. Defendant was sentenced to a determinate term of ten years and eight months, and a consecutive, indeterminate term of 120 years to life.

¹ The original abstracts of judgment prepared after resentencing, apparently filed December 2, 2016, were not included in the record on appeal. On February 8, 2017, appellate counsel filed a request to correct those abstracts of judgment in the trial court. Amended abstracts of judgment were filed on March 28, 2017. The errors we identify are in the **amended** abstracts of judgment. That is, even though the court corrected the errors identified by appellate counsel, it must **also** correct the errors identified in this opinion.

On appeal, we affirmed in part, reversed in part, and remanded with instructions. (*People v. Valenti* (2016) 243 Cal.App.4th 1140, review den. (*Valenti I*.) Counts 1, 5–10, and 14 were reversed; we remanded counts 6–9 for retrial and prohibited retrial of counts 1, 5, 10, and 14. We reversed the court’s noneconomic damage awards (Pen. Code, § 1202.4, subd. (f)(3)(F))² and ordered the court to hold a hearing to evaluate individual noneconomic damages, if any, for counts 15, 23, and 24 only. Finally, we directed the court to resentence defendant in accordance with our opinion. The remittitur was issued on April 29, 2016.

On remand, the trial court dismissed counts 1, 5, 10, and 14; granted the People’s request to dismiss counts 6–9; and sentenced defendant to a determinate term of 38 years and a consecutive, indeterminate term of 75 years to life. For the determinate sentence, the court selected count 16 (§ 115, subd. (a); forgery) as the base term and imposed the high term of three years. The court imposed eight months—one-third the middle term of two years—per count for counts 17, 18, and 19 (§ 115, subd. (a)); a one-year misdemeanor term for count 21 (§ 166, subd. (a)(4); disobeying a court order); and the high term of 16 years per count for counts 2 and 12 (§ 288.5; continuous sexual abuse of a child), to run consecutively. For the indeterminate sentence, the court imposed five consecutive terms of 15 years to life for counts 13 and 20 (§ 288.5) and counts 15, 23, and 24 (§ 288, subd. (a); lewd act on a child) under the One Strike Law (§ 667.61, subds. (c), (i)).

² All undesignated statutory references are to the Penal Code.

Defendant was ordered to pay fines, fees, surcharges, and penalty assessments totaling \$22,260—a \$10,000 restitution fine (§ 1202.4, subd. (b)); a \$440 court security fee (§ 1465.8, subd. (a)(1)); a \$330 criminal conviction assessment (Gov. Code, § 70373); a \$900 child abuse prevention fine (§ 294, subd. (a)); and a habitual sex offender fine (§ 290.3) consisting of a \$2,900 base fine and \$7,690 in penalty assessments. Finally, the court imposed \$6,664.65 in victim restitution (§ 1202.4, subds. (a)(1), (f)(4), (k)(4)) and awarded defendant 1,233 days of custody credit. The victims eligible for noneconomic damages decided not to seek them, and that restitution hearing was taken off calendar without prejudice.

Defendant filed a timely notice of appeal and we appointed counsel to represent him. On April 25, 2017, appellate counsel filed a brief in which he raised no issues and asked us to review the record independently. (*People v. Wende, supra*, 25 Cal.3d 436.) Later that day, we notified defendant that his counsel had failed to find any arguable issues and that he had 30 days to submit by brief or letter any arguments he wished this court to consider. We received a supplemental brief on June 5, 2017.³

DISCUSSION

We have examined the entire record, and are satisfied appellate counsel has fully complied with his responsibilities and no arguable issues exist in the appeal before us. (*Smith v. Robbins* (2000) 528 U.S. 259, 278–284; *People v. Wende, supra*, 25 Cal.3d at p. 443.) However, in our review of the record, we noted

³ Defendant’s request for new appellate counsel is denied.

several errors in the corrected abstracts of judgment filed March 28, 2017, which we order the court to correct on remand.

1. Defendant’s supplemental brief does not raise issues cognizable in this appeal.

As noted, defendant filed a supplemental brief in this case purporting to raise approximately 23 claims of error. Yet while defendant has appealed from the judgment entered upon resentencing, he has failed to raise any issues pertaining to that resentencing. Instead, defendant uses his supplemental brief to assert claims outside the scope of this appeal and evidence not in the appellate record before us. The brief is frequently unclear as to whether defendant is raising issues pertaining to the original trial and pre-verdict proceedings or if he is raising claims of ineffective assistance of appellate counsel in failing to raise the aforementioned issues in *Valenti I*. In either event, we do not consider the merits of these claims.

First, to the extent defendant’s contentions pertain to matters prior to sentencing, all factual predicates upon which these claims rested were available at the time of his initial appeal, and defendant offers no apparent justification as to why they could not have been raised during the first appeal. (*People v. Senior* (1995) 33 Cal.App.4th 531, 535.) As such, the issues are forfeited by his failure to raise them in *Valenti I*. (*People v. Murphy* (2001) 88 Cal.App.4th 392, 395 [“ ‘California law prohibits a direct attack upon a conviction in a second appeal after a limited remand for resentencing or other posttrial procedures’ ”].)

Second, to the extent defendant’s contentions pertain to ineffective assistance of trial and/or appellate counsel, he raises matters and cites to evidence outside the record in this appeal—

and in *Valenti I*—and claims of ineffective assistance of counsel on such matters “generally must be raised in a petition for writ of habeas corpus.” (*People v. Salcido* (2008) 44 Cal.4th 93, 172.)

2. The abstracts of judgment are incorrect.

Upon remand in *Valenti I*, the court properly resentenced defendant and the courtroom clerk prepared a minute order that accurately reflected the court’s orders. Nevertheless, the abstracts of judgment do not reflect the judgment imposed.⁴

“An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court’s oral judgment and may not add to or modify the judgment it purports to digest or summarize.” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

“However, the abstract is a contemporaneous, statutorily sanctioned, officially prepared clerical record of the conviction and sentence. It may serve as the order committing the defendant to prison [citation], and is ‘ “the process and authority for carrying the judgment and sentence into effect.” [Citations.]’ [Citation.] As such, ‘the Legislature intended [it] to [accurately] summarize the judgment.’ [Citation.] When prepared by the court clerk, at or near the time of judgment, as part of his or her official duty, it is cloaked with a presumption of regularity and reliability. [Citations.]” (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070, alterations in *Delgado*.)

Accordingly, the California Supreme Court has long recognized that it is “important that courts correct errors and omissions in abstracts of judgment.” (*People v. Mitchell, supra*,

⁴ As explained in footnote 1, *ante*, the abstracts of judgment have already been corrected at least once. The errors we identify are in the amended abstracts of judgment filed on March 28, 2017.

26 Cal.4th at p. 185.) “Courts may correct clerical errors at any time, and appellate courts (including this one) that have properly assumed jurisdiction of cases” (*ibid.*) may order correction of an abstract of judgment that does not accurately reflect the oral pronouncement of the sentence (*id.* at pp. 185–188). This is so even when such errors or omissions only involve fines, as fines are part of the judgment, and all fines and fees must be set forth in the abstract of judgment. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

The court is directed to correct the following errors and omissions in the abstract of judgment for the *determinate* sentence:

- **Item 6**—delete 75.

Item 6 inaccurately lists 75 years’ total time on “attached pages.” The “attached pages” contemplated by item 6 are pages relevant to the determinate sentence—usually, but not always, listed on a Form CR-290(a), the official attachment form approved by the Judicial Council. Here, the 75 years noted in item 6 is the minimum parole period of the *indeterminate* sentence, which is accounted for in item 7. As the abstract of judgment for the indeterminate sentence is a separate document, not an attachment, the indeterminate that time is not listed on “attached pages” and should not be noted in item 6.

- **Item 1**—uncheck the box and delete 2.

As discussed, on the determinate abstract of judgment, “attached pages” refers only to attachments relevant to the *determinate* sentence. Here, as there are no determinate counts listed on any additional pages, the checked box apparently refers to the second page of the abstract of judgment—but since every Form CR-290 has a second page, the second page is *part* of the abstract of judgment, not an attachment to it. Likewise, as the indeterminate abstract of judgment (Form CR-292) is a different document, it is also not an attachment.

- **Item 9b**—on the line for Case A, enter \$6,664.65 and check the box next to Restitution Fund.

In *Valenti I*, this court reversed the *noneconomic* restitution awarded under section 1202.4, subdivision (f)(3)(F). (*Valenti I, supra*, 243 Cal.App.4th at pp. 1179–1184.) We did not reverse the economic restitution payable to the California Victim Compensation and Government Claims Board under subdivision (f)(4).

Accordingly, the court properly reimposed this form of restitution, and it must be included.

- **Item 13**—change \$10,590 to \$11,490.

The \$10,590 in non-enumerated fines noted in item 13 apparently refers to the habitual sex offender fine (§ 290.3) and penalty assessments listed on page 11 of the July 13, 2016, minute

order. However, the court *also* imposed a \$900 child abuse prevention fine (§ 294, subd. (a)), not subject to penalty assessments, which is reflected on page 5 of the minute order.

- **Item 16**—change total credit to 1,233, actual credit to 1,073, and local conduct credit to 160.

Upon resentencing, the court properly recalculated defendant’s custody credit in accordance with *People v. Buckhalter* (2001) 26 Cal.4th 20, 23, 33–34, 37 and our instructions in *Valenti I, supra*, 243 Cal.App.4th at p. 1184. The abstract incorrectly lists credit applicable to defendant’s original sentence. It should reflect the credit calculated at resentencing.

The court is also directed to correct the abstract of judgment for the *indeterminate* part of the sentence as follows:

- **Item 1**—uncheck the box and delete 2.

The indeterminate abstract of judgment does not have any attached pages. The checked box apparently refers to the determinate abstract of judgment, which, as discussed, is a different document, not an attachment.

We are confident that upon remand, the court will correct these errors and “ ‘actively and personally [e]nsure the clerk accurately prepares a correct amended abstract of judgment.’ ” (*People v. Johnson* (2015) 234 Cal.App.4th 1432, 1459.)

DISPOSITION

The judgment is affirmed. Upon issuance of the remittitur, the trial court is directed to amend the March 28, 2017, abstracts of judgment to correct the errors identified in section two of this opinion and to send certified copies of the amended abstracts of judgment to the Department of Corrections and Rehabilitation and to appellate counsel.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

JOHNSON (MICHAEL), J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.