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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RENE HEDMAN, Defendant and Appellant.	B339682 (Los Angeles County Super. Ct. No. VA111987)

APPEAL from a judgment of the Superior Court of Los Angeles County, Danielle R.A. Gibbons, Judge. Affirmed with directions.

Teresa Biagini, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Jason Tran and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Rene Hedman appeals from a judgment entered after resentencing, contending the trial court erred by (1) reimposing an upper term for his robbery conviction rather than the middle term, (2) reimposing an unenforceable restitution order, and (3) failing to update his conduct credits We agree with only the second and third contentions and thus affirm with directions.

BACKGROUND

In 2010, a jury convicted Hedman of various crimes and the court sentenced him to a prison term of 31 years, including the upper term of five years for second degree robbery, and ordered him to pay a $2,000 restitution fine. We largely affirmed the judgment. (*People v. Anaya et al.* (Dec. 21, 2011, B226589) [nonpub. opn.].)

In 2024, Hedman moved for resentencing under Penal Code section 1172.75,[1] requesting, as pertinent here, that the upper term for robbery be lowered to the middle term on the ground he had been "discipline-free for the last six years," was a hard and consistent worker, and was a good and motivated student.

The court denied Hedman's request, struck a now-invalid one year enhancement, and resentenced him to a total prison term of 29 years. The court did not orally or in its minute order reimpose the $2,000 restitution fine or update Hedman's custody credits but the abstract of judgment reflects the $2,000 fine and the original 393 days of custody credits.

Hedman appeals.

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[1] Undesignated statutory references are to the Penal Code.

DISCUSSION

A. Hedman is not Entitled to a Middle Term Sentence

Hedman contends the court erred in not resentencing him to the middle term for robbery. He argues the court failed to apply section 1170, subdivision (b)(2), which allows imposition of the upper term only where aggravating circumstances supporting such a term are either stipulated or proven beyond a reasonable doubt to a trier of fact.[2] Although subdivision (d)(2) of section 1172.75 generally does require the court to apply such a stipulation or proof, subdivision (d)(4) of that statute specifically excepts the new criteria from cases where the court originally imposed the upper term.

In 2022, 12 years after Hedman's 2010 sentencing, the Legislature enacted section 1172.75, providing a resentencing procedure that eliminates sentence enhancements for prior prison terms unless the prior terms were for sexually violent offenses. (Stats. 2021, ch. 728, § 3.) If the sentence, as here, includes such an enhancement, the trial court is required to recall the sentence and resentence the defendant *ab initio*. (§ 1172.75, subd. (c).)

Under subdivision (d)(2) of section 1172.75, in resentencing a defendant the court must apply all ameliorative changes in the law. Subdivision (d)(2) of section 1172.75 " ' "requires a full resentencing,

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[2] Respondent argues Hedman forfeited the claim by failing to raise it below. Anticipating this argument, Hedman contends he received ineffective assistance of counsel. Because the issue is whether Hedman's sentence was unauthorized, we decline to find he forfeited the claim. (See *People v. Scott* (1994) 9 Cal.4th 331, 354 [appellate courts may intervene in the first instance where an unauthorized sentence can be rectified independent of any factual issues presented by the record at sentencing].)

not merely that the trial court strike the newly 'invalid' enhancements." ' [Citation.]" (*People v. Grajeda* (2025) 111 Cal.App.5th 829, 836.)

When Hedman was originally sentenced, section 1170, subdivision (b), "provid[ed] that the choice between the lower, middle, and upper terms 'shall rest within the sound discretion of the court,' . . . . (Former § 1170[, subd.] (b), enacted by Stats. 2007, ch. 3, § 2 pp. 6–7.) The amendment gave judges 'broad discretion in selecting a term within a statutory range.' " (*People v. Lynch* (2024) 16 Cal.5th 730, 747 (*Lynch*).) The statute did not require any particular aggravating facts to justify imposition of the upper term nor that the aggravating facts be stipulated to or found by the trier of fact. (See *ibid*.)

In 2022, the Legislature made ameliorative changes by amending section 1170, subdivision (b). As amended, section 1170, subdivision (b) provides that the trial court may impose a sentence exceeding the middle term only when "there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial." (§ 1170, subd. (b)(2); *Lynch*, *supra*, 16 Cal.5th at p. 748; *People v. Brannon-Thompson* (2024) 104 Cal.App.5th 455, 466 (*Brannon-Thompson*).) Where a trial court violates amended section 1170, subdivision (b) by relying on unproven aggravating facts to impose an upper term sentence, the sentence also violates the Sixth Amendment. (*Lynch*, *supra*, at p. 760.)

Absent language to the contrary in section 1172.75, section 1170, subdivision (b)'s new factfinding requirement would apply to Hedman's resentencing not only because subdivision (d)(2) of section 1172.75 directs the resentencing court

to apply ameliorative changes in the law but because we presume that the Legislature intends ameliorative changes to apply in all cases that are nonfinal, including cases which became nonfinal due to resentencing. (See *People v. Padilla* (2022) 13 Cal.5th 152, 162-163 (*Padilla*).)

Subdivision (d)(4) of section 1172.75, however, provides an exception to the new factfinding requirements. It states: "*Unless the court originally imposed the upper term*, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial." (Italics added.) In *Brannon-Tompson*, our colleagues in the Third District held that subdivision (d)(4) unambiguously permits a resentencing court to reimpose an upper term—without heightened factfinding—if it imposed the term originally. (*Brannon-Thompson*, *supra*, 104 Cal.App.5th at pp. 466–467.) "[T]he new burden of proof amendments to section 1170, subdivision (b), apply only if the trial court is imposing the upper term for the first time at a section 1172.75 resentencing." (*Brannon-Thompson*, *supra*, at pp. 466–467.)

Here, the trial court reimposed the upper term sentence imposed in 2010. Thus, pursuant to subdivision (d)(4) of section 1172.75, the court had no obligation to apply the 2022 heightened factfinding requirement in section 1170, subdivision (b).

Hedman urges that we reject the reasoning of *Brannon-Thompson* in favor of the Sixth District's decision in *People v. Gonzalez* (2024) 107 Cal.App.5th 312, 330 (*Gonzalez*), which disagreed with *Brannon-Thompson*. In *Gonzalez*, the court reversed the reimposition of an upper term sentence under

section 1172.75 because the resentencing court had not complied with amended section 1170, subdivision (b).

The *Gonzalez* court expressly "acknowledge[d] that the plain language of section 1172.75, subdivision (d)(4) . . . , could be interpreted as not requiring proof of aggravating factors before reimposing an upper term sentence." (*Gonzalez*, *supra*, 107 Cal.App.5th at pp. 328–329.) The court stated, however, that "another reasonable interpretation of section 1172.75, subdivision (d)(4) would simply *restrict the scope of defendants eligible to receive the upper term* at resentencing to those who previously received the upper term, instead of creating a condition or exception independently justifying the imposition of the upper term." (*Gonzalez*, *supra*, 107 Cal.App.5th at p. 329.) Under this interpretation, only a defendant originally sentenced to the upper term would be eligible to be resentenced to the upper term, but even then, the court could not impose the upper term sentence without proof of aggravating factors beyond a reasonable doubt. (*Ibid.*) The *Gonzalez* court found this interpretation was necessary to avoid a Sixth Amendment violation under *Lynch*, which held that under amended section 1170, subdivision (b), " 'a Sixth Amendment violation occurs when the trial court relies on unproven aggravating facts to impose an upper term sentence.' " (*Gonzalez*, *supra*, at p. 330.)[3]

We disagree with *Gonzalez*. As a preliminary matter, the construction of subdivision (d)(4) of section 1172.75 that *Gonzalez* advances is inconsistent with the provision's wording and grammatical structure. *Gonzalez* reads the first clause of the

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[3] Our Supreme Court recently granted a petition for review that presents the question over which *Brannon-Thompson* and *Gonzalez* split. (See *People v. Eaton* (Mar. 14, 2025, C096853) [nonpub. opn.], review granted May 14, 2025, S289903.)

subdivision as though it is appended to the end of the provision by the conjunction "and." But the first clause of the subdivision begins with the word "unless"—a subordinating conjunction that signals an exception—and the clause appears at the beginning of the provision set off by a comma, indicating that it modifies the text that follows.

Moreover, it is unnecessary to look beyond the plain meaning of subdivision (d)(4) of section 1172.75 because no Sixth Amendment violation threatens here. When Hedman was sentenced in 2010, the prior version of section 1170 granted the trial court broad discretion to select any of three applicable prison terms. As *Lynch* explained, under that sentencing scheme there was no requirement to find a particular fact to justify imposition of the upper term sentence. (See *Lynch, supra*, 16 Cal.5th at p. 747; *Cunningham v. California* (2007) 549 U.S. 270, 294 [" 'everyone agrees' " this sentencing scheme "encounters no Sixth Amendment shoal"].) Where the resentencing court elects to retain an upper term sentence that complied with the Sixth Amendment when originally imposed, the court need not engage in additional factfinding under subdivision (d)(4) of section 1172.75. (*People v. Mathis* (2025) 111 Cal.App.5th 359, 373–374 (*Mathis*), review granted Aug. 13, 2025, S291628.)

This is so because the Legislature is free to "write statutes that provide for a different or more limited form of retroactivity, or for no retroactivity at all," and may "disclaim the application of a new ameliorative law to proceedings that occur after a defendant's conviction or sentence has been vacated." (*Padilla*, *supra*, 13 Cal.5th at p. 162.) "Section 1172.75, subdivision (d)(4), does exactly that. It expresses the Legislature's intent that the new, heightened factfinding requirements for aggravating factors do not apply where the defendant was originally, lawfully sentenced to an upper term." (*Mathis*, *supra*, 111 Cal.App.5th at p 374.)

During Hedman's resentencing proceeding, the trial court permissibly elected to retain the upper term sentence previously imposed under a sentencing scheme that was fully consistent with his Sixth Amendment right to a jury trial. We thus decline Hedman's invitation to discount *Brannon-Thompson* in favor of *Gonzalez*.

B. The Restitution Fine Must be Vacated

Hedman contends the $2,000 restitution fine imposed under section 1202.4, subdivision (b) should be vacated pursuant to section 1465.9, subdivision (d) because it is over 10 years old. Respondent concedes the point, and we agree.

After resentencing, the Legislature enacted Assembly Bill No. 1186, which became effective on January 1, 2025. As relevant here, that bill enacted section 1465.9, subdivision (d), which makes the balance of restitution fines imposed under section 1202.4 unenforceable and uncollectible 10 years after they were imposed and requires that any portion of a judgment imposing those fines be vacated. In light of this statute and because the restitution fine here is over 10 years old, we will order the fine vacated.

C. Hedman is Entitled to Recalculated Custody Credits

The abstract of judgment from the resentencing hearing reflects the 393 days custody credits Hedman received at his original sentencing. Hedman contends he is entitled to an updated abstract that accurately reflects the amount of custody credits earned to date. Respondent concedes the point, and we agree.

"Where a defendant has served any portion of his sentence under a commitment based upon a judgment . . . which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts." (§ 2900.1.) The abstract of

judgment must be corrected to reflect such credit rather than the custody credits from Hedman's original sentencing.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to omit the restitution fine and correctly reflect Hedman's custody credits to date, and to forward a copy of the corrected abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

WEINGART, J.

M. KIM, J.